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TREATIES: A SOURCE BOOK
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TABLE OF CONTENTS

PART ONE. WHY TREATIES?: AN INTRODUCTION TO INDIAN TREATIES AND THE HISTORY OF TREATYMAKING	p. 1
PART TWO. TWO TREATIES AS DOCUMENTS FOR CLASSROOM USE	p. 34
PART THREE. A COMPARATIVE PERSPECTIVE: THE CASE OF NEW ZEALAND	p. 152

PART ONE. WHY TREATIES? AN INTRODUCTION TO INDIAN TREATIES AND
THE HISTORY OF TREATYMAKING

For several years in the mid-1980s, it was an annual ritual. Members of Ojibwa communities in northern Wisconsin set out to fish in barely ice-free waters of the region's lakes. They did this because treaties their ancestors negotiated with the United States in the early nineteenth century stipulated that they could continue to harvest resources at their customary hunting and fishing sites even though they would henceforth live on circumscribed lands called reservations. When they arrived at public boat landings, the Indians were met by groups of angry whites who picketed the lake shore, chanted slogans and declared to anyone within earshot that an old treaty should not exempt people from obeying state fishing laws. As the drama unfolded each year, other players inevitably appeared: local politicians (both Indian and white) who hoped to lead their constituents to victory, officials of the Department of Natural Resources who cast themselves as the defenders of compromise, support groups from nearby cities who both defended the Indian fishing parties and augmented the crowds of lakeside picketers and--the final mark that something important was going on--television crews from Milwaukee, Chicago and New York.

Indian leaders stated their case simply and eloquently. Treaties (in this case agreements signed in 1837, 1842 and 1854) are "the supreme law of the land." Indians have a superior right to fish because congressional ratification of the agreements

marked them with a federal endorsement. Since the federal courts have upheld similar claims in Puget Sound and elsewhere, tribal lawyers pointed out, protecting Indian fishing rights should be purely a matter of law enforcement.

The opposition, fueled by economic worries (the area is heavily dependent on tourism) and racial hatred, was equally forthright. The executive director of the Wisconsin Counties Association argued, for example, that "the exercise of treaty rights is not in tune with contemporary society."¹ Assisted by other groups with names like Stop Treaty Abuse and the Citizens Equal Rights Alliance, the counties association pointed out that times have changed: tribal economies are no longer reliant on fishing as they were in the nineteenth century, and besides, tribal communities are no longer even "Indian" because they contain many people of mixed ancestry. The treaties were written for another era, these opponents declared; it is time to "modernize" the old rules.

Luckily--miraculously, really--no one was killed in these face-offs which reached their peak each April. They were frightening events which brought to mind the school desegregation crisis in Boston in the 1970s, the open housing marches in Chicago in the 1960s and earlier confrontations between federal authority and segregationists in the Deep South. And as with these other cases involving Blacks, the well-publicized confrontations in Wisconsin have been repeated in a variety of settings across the United States. The state of Washington, for

example, engaged an array of tribes in a decades-long struggle over Salmon runs in Puget Sound. There, as in Wisconsin, a nineteenth century treaty guarantee was upheld in federal court, state officials and local fishing interests fought it and an uneasy peace was reached after years of confrontation. The state of Wyoming has recently been obsessed with yet another sacred western resource--water--which treaties granted the Indians of the Wind River Reservation but which white farmers have grown accustomed to using. In Montana, where the issue is coal, the sides are a little different: Indians want to mine it and whites have opposed them on environmental grounds. The tribes have cited their treaties to defend their right to make this choice.

In each of these cases--and in dozens of others around the country--Indians and their opponents have quarreled over the idea that tribal members have special prerogatives under American law. Native Americans claim that their property is in some way sovereign. Indian authority within their treaty-recognized domain is, to use the dictionary definitions of sovereign, "supreme, paramount, independent." Areas of tribal jurisdiction, they argue, resemble sovereign states. This argument lies at the heart of contemporary Indian political life. It sets Native Americans apart from other ethnic groups who struggle for civil rights and fair access to national legal institutions because it asserts that tribes are more than business corporations or associations of like-minded individuals. Tribal communities maintain that their governments are similar to national states.

The claim of Indian sovereignty as a part of contemporary American political life was first made in the "Declaration of Purpose" adopted at a national convention of Native Americans held in Chicago in 1961. Drafted by the Indian anthropologist D'Arcy McNickle, this manifesto asserted that:

When Indians speak of the continent they yielded, they are not referring only to the loss of some millions of acres in real estate. They have in mind that the land supported a universe of things they knew, valued, and loved. With that continent gone, except for the few poor parcels they still retain, the basis of life is precariously held, but they mean to hold the scraps and parcels as earnestly as any small nation or ethnic group was ever determined to hold to identity and survival.²

For Indians, the documents that ultimately set their areas of jurisdiction apart from other tracts of land, that make their "scraps and parcels" different from ethnic neighborhoods or racially homogeneous counties, are their treaties. Despite the fact that these agreements may have been forced on defeated people or written in alien languages, they were negotiated with people who were considered legal equals at the time, signed and approved by authorized commissioners whose mandate came from the president, and ratified in accordance with rules established by the U. S. constitution.

The 370-odd treaties negotiated with Indian nations are thus a powerful source of cultural pride and political power. These

documents both spur on modern tribal leaders and provoke sharp resistance from those who oppose them. The existence of these treaties also raises a series of difficult historical questions.

First, why did the United States choose this form of relationship with the indigenous peoples of North America? The Canadian government negotiated a comprable number of treaties with that country's aboriginal peoples, but it made clear throughout the process that all sovereignty resided with the central government. (For much of its history the Canadian government insisted that its agreements with Indian people were actually land sales. Officials there referred to their treaties as "treaties and surrenders.")³ Mexico and the other Latin American countries have no treaties with tribal groups. The government of New Zealand signed one treaty with Maori leaders; the Australians signed none.

Second, why did the U.S. make so many treaties? Assuming some practical reason for treaty-making in the first days of the republic, why did the American government maintain the practice after the balance of power had shifted so strongly in its favor? Again, the New Zealanders signed one treaty in 1840 and then tried to forget about it.

Third, why has the American government bothered to enforce these treaties, particularly in recent years? It is remarkable that a society of people who can't remember Jimmy Carter would treat these obscure documents with such reverence. We have forgotten Sunday closing laws, we ignore the doctrine of state's

rights, why do we remember Indian treaties?

Finally, how can we reconcile the history of the constitution with the persistence of treaty-making? Despite the sympathy one might feel for struggling tribes like the Wisconsin Ojibwes, the boat landing protestors have a point: why should one group of people be exempt from laws passed by a democratically-elected legislature? Furthermore, the constitutional history of the United States is largely the story of the expansion of individual rights, not only in the guarantees of the Bill of Rights, but in the extension of citizenship to slaves, women and 18 year olds. Treaties appear to privilege one group over another, thereby undermining equal citizenship. How do treaty rights square with the constitution's defense of equality? How is the enforcement of treaties constitutional?

Each of these questions deserves a full response, but the first one is fundamental. Before we can understand why treaties have persisted and how they might be squared with the doctrine of human equality, we need to understand where they came from. Once that is established, preliminary answers to the other two questions can be presented as a guide for teachers and students.

Why Treaties?

On March 4, 1789 in New York City, the first meeting of the United States Senate was called to order as prescribed by the constitution. Because a number of members were still enroute to the capital from their homes, the Senate observed that it lacked a quorum and a motion was quickly adopted to adjourn. The Senate

did not achieve a quorum for over a month. On April 6, however, with a majority of members present, the Senate went to work ratifying the election of the President, establishing the new government's various departments and setting up the legislative committee system. In the midst of its first month's work--before cabinet officers were confirmed or even the judiciary organized--President Washington sent his first executive message to the Senate.

The President's first message was a report from Secretary of War Henry Knox. It contained two treaties signed by representatives of the United States and "certain northern and northwestern tribes" at Fort Harmar on the Muskingum River in Ohio (an area ceded by the British in 1783 but not yet formally organized into a state or federal territory). Knox and Washington recommended that the Senate consent to these treaties as the new constitution prescribed. In effect, the administration asked Congress to equate Indian treaties with other international agreements.

Everyone who read Washington's message realized that it invited a fundamental decision. The constitution did not require that Indians be dealt with by treaty. It stated only that Congress would have the power to "regulate commerce with foreign nations, and among the several states, and with the Indian tribes." The constitution did not indicate the form this "regulation" would take. In the section on the powers of the President, it only said he could "make treaties," it did not say

with whom.

The ambiguity surrounding official relations with the Indians was deepened by the phrase "Indians not taxed" which appeared in Article I of the constitution in reference to the apportionment of seats in the House of Representatives. "Indians not taxed" were not counted for purposes of representation. This could mean that Indians were to be excluded from the government or it could mean that they were to be included, but only after they became tax-paying members of the new American society.

Washington could have recommended that the treaties be considered contracts or agreements and therefore be approved by resolution. He could also have avoided the documents altogether and simply requested an appropriation to fulfill the government's obligations undertaken at Ft. Harmar. Congress would probably have gone along with either proposal and there never would have been any treaties. Why did he want treaties?

First, there were practical considerations. The Indians were numerous, the British were still very much in evidence in the Great Lakes country (they still held Detroit), the Spanish were firmly settled in their two-hundred-year-old settlements in Florida, and the American government was broke. In the spring of 1789 Daniel Shays was about to be pardoned for leading the first American tax revolt. As military men Washington and Knox knew how expensive Indian wars could be. They were not eager to test the will of eastern tax payers to subsidize the expansion of distant, western settlements. Given this reality, Knox predicted

that the alternative to peaceful relations and formal treaties was disaster. He wrote in his report to the Senate:

In case no treaty should be held, the events which are rising in rapid succession on the frontiers, must be suffered to take their own course. Their progress and issue will deeply injure, if not utterly destroy, the interests and government of the United States in the Western Territory.⁴

Second, the administration urged the Senate to ratify the Harmar agreements as treaties in order to prevent each state from adopting its own Indian policy and acting independently. After all, the new government was being formed in an effort to bring some central authority into national political life. Ironically, Indian treaties could be a badge of American, as well as tribal, sovereignty. Elevating relations with Indians to the level of formal treaty-making would preclude the possibility of separate state agreements with tribes. If Indians held federal treaties (always described as "the supreme law of the land"), state agreements would clearly be inferior and unattractive to tribal leaders. Formal treaties would guarantee the federal government exclusive jurisdiction over Indian affairs.

Washington argued for the importance of federal supremacy in Indian affairs in August of 1789 when he took the unprecedented step of sitting down with his Senate colleagues to discuss the growing conflict between the Creek Indians and the state of Georgia. Led by a brilliant mixed-blood commander named

Alexander McGillivray and supplied by the Spanish at Pensacola, the Creeks had expelled white intruders on their land and threatened to roll back Georgia's borders. The President proceeded delicately with the senators. He wanted to reassure the Georgians that the federal government would come to their assistance and discourage the state's hawks from launching a unilateral attack on the Creeks. Washington guessed that if a Georgian attack were launched, it would probably fail, drawing the United States into a war of revenge and pit its tiny army against both the well-armed Creeks and their Spanish sponsors. The President therefore advised the senators that conciliating "the powerful tribes of Indians in the southern district ... and (attaching) them firmly to the United States, may be regarded as highly worthy of the serious attention of the government."⁵

The President and the Senate decided to dispatch federal treaty commissioners to Georgia to negotiate a new agreement with the Creeks. One more ticklish question remained. What if the Creeks wouldn't negotiate a satisfactory agreement? Should the commissioners threaten McGillivray with military action? Washington's response was clear: no. (The President was wise to anticipate this possibility, for as it happened the negotiations in Georgia proved fruitless. When that became evident, the president invited McGillivray to New York. In the summer of 1790 the Creek leader and his lieutenants arrived in the American capital and signed a treaty which provided, among other things, for the appointment of McGillivray to the rank of Brigadier

General in the American Army (at a salary of \$1200 per year) and allowed the tribe to import \$60,000 per year in trade goods duty free.)

In the fall of 1789, with the Creek discussions behind him, Washington pressed the Senate to act on Knox's May report. The Senate's new Indian affairs committee opposed treating the agreements as treaties, but the President insisted. He sent another special message to the Upper House on September 17 expanding on his earlier arguments:

It is said to be the general understanding and practice of nations, as a check on the mistakes and indiscretions of Ministers or Commissioners, not to consider any treaty negotiated and signed by such officers as final and conclusive until ratified by the sovereign or government from whom they derive their powers: this practice has been adopted by the United States respecting their treaties with European Nations; and I am inclined to think it would be advisable to observe it in the conduct of our treaties with the Indians: for tho such treaties, being on their part made by their chiefs or rulers, need not be ratified by them, yet being formed on our part by the agency of subordinate officers, it seems to be both prudent and reasonable that their acts should not be binding on the nation until approved and ratified by and settled, so that our national proceedings in this respect may become uniform, and directed by fixed and stable principles.⁶

Washington seemed to be discussing irresponsible treaty commissioners, but his real message was that treaties would be binding on the nation and therefore would give the national government a way to hold the states to fixed and stable principles. On September 22, 1789, the Senate responded to Washington's summer-long campaign; it ratified the Fort Harmar treaties, thereby establishing the practice of formal treaty-making as the basis for United States Indian policy.

A third reason for the decision to deal with Indians by treaty deserves mention. It seems that practical considerations were preeminent in 1789 because Washington, Knox and the senators were by nature practical men, and because they had no deep sympathy for Indian people. Nevertheless, it is apparent from their writings and discussions that there was also an ideological reason to ratify the Harmar treaties: treaties were the fairest, most just way for a new nation to proceed, especially a nation which claimed to represent justice and liberty. Knox said it best. "It is presumable," he noted in his report to the Senate, "that a nation solicitous of establishing its character on the broad basis of justice, would not only hesitate at, but reject, every proposition to benefit itself by the injury of any neighboring community, however contemptible and weak it might be...."⁷

The decision to deal with Indians by treaty was not taken lightly or innocently. The question of ratification forced the young American government to address the significance of its

commitments to the tribes and to define the federal government's role in making and maintaining those commitments. By taking the treaty route, Washington and the Senate made clear that Indian affairs would be primarily a federal concern. Associating Indian affairs with federal power would privilege national concerns over local ones, and create the opportunity to link national ideology and the treatment of native people. As Knox wrote, to reject treaty relations would "be a gross violation of the fundamental laws of nature and of that distributive justice which is the glory of a nation."³

One can answer the question, "Why Treaties?" for 1789, but one other aspect of the story remains unexplained: where did those Fort Harmar agreements come from? The first Senate discussed the issue of treaties seriously, but their debate did not take place in a vacuum. What precedents did the legislature believe it was following? What did treaties mean in eighteenth century Indian affairs?

Legal agreements between nations--treaties--were central to the European presence in the Americas. From the time of Columbus, questions of ownership, sovereignty and legitimacy stalked the adventurers and dreamers who came here and colored their relations both with each other and with the continent's native people. Formal agreements between the sponsors of the parties involved in the Americas were the principal means of resolving such questions.

Pope Alexander VI's Bull of May 4, 1493, issued less than

ninety days after Columbus's return to Spain, was the first such agreement. Formulated at the request of King Ferdinand and Queen Isabella, the document noted that the monarchs had sent the Italian explorer to "discover certain islands and mainlands" so as to bring their residents "to the worship of our redeemer and the profession of the Catholic faith." Having succeeded in "discovering" such lands ("wherein dwell very many peoples living in peace"), the Pope declared that Ferdinand and Isabella had proposed "to bring under (their) sway the said mainlands and islands." Acting on this request the Pope thus declared:

we ... out of our own sole largess and certain knowledge and out of the fullness of our apostolic power ... which we hold on earth, do ... give grant and assign to you and your heirs and successors ... forever, ... all islands and mainlands found and to be found, discovered and to be discovered towards the west and south (of a line) one hundred leagues towards the west and south (of) the Azores.⁹

The Pope went on to exempt any Christian princes who might live in the unknown lands from the order and to promise excommunication and "the wrath of Almighty God" to all who contravened his order. It was as close to a deed to the New World as a European monarch could obtain.

The king of France is supposed to have reacted to Alexander's grand bequest by asking, "where is Adam's will?" The Protestant Reformation no doubt brought forth even nastier comments, but the legacy of this legalistic turn remained. The

Spanish organized their empire as an extension of their European kingdom. With Viceroys and Governors at work in the New World, the Spanish Crown could maintain the idea that the empire's borders were the same as national borders in Europe, held by force and recognized by Rome. While this imperial model eliminated the need to treat formally with the Indians, it did suggest that any conflicts between Spain and its rivals in the New World would be defined as international conflicts.

When the conflicts in Europe became conflicts between Catholic and Protestant states, the international aspect of their American rivalries intensified. On the continent, enemy states challenged the legitimacy of each other's government as well as a particular disputed border. Thus, imperial rivalries in North America--where the competition between the major powers was often played out with great enthusiasm--began to involve more than the question of who placed a marker where and who sailed up which river first. Competing claims to New World territories took on wider consequences and involved colonials in an angry debate over the basis of their rule. Enemies challenged more than their enemies boundaries; they challenged their right to rule at all. The latter argument was launched with special fervor when enemies addressed a monarch's right to rule a foreign people on a distant continent.

In the vague Mid-Atlantic region of "Virginia," for example, the fact that the Spanish had established a Jesuit mission in the Chesapeake bay in the 1570s did not foreclose a British attempt

to launch its own colonies in the very same spot. Similarly, knowledge that Champlain had sailed along the New England Coast in the first decade of the seventeenth century did not prevent Englishmen from proudly landing another party on Cape Cod. The English were unwilling simply to submit to Spanish and French claims of having arrived in the area first. In addition to asserting their own claims to first arrival, the English, Dutch and other latecomers to the continent argued that, unlike European despots, they were legitimate rulers of the new lands. They actually settled the land and "planted" a colony there. Evidence of cultivation and the establishment of settler communities thus formed part of their claim to the New World. And part of this evidence of settlement was the acquiescence of the indigenous population to the newcomer's presence. In this sense, the English "plantation" at Jamestown and the Dutch trading post at Fort Orange were both responses to the Papal Bull.

Out of such imperial rivalries grew a series of rules which ultimately formed the basis of modern international law. One of these new rules was the notion of adverse possession. Those who use the land, own it, regardless of prior claims or appeals to a higher authority. For the English, Jamestown was an extended adverse possession claim against Spain. Writing in 1688, the German legal theorist Samuel von Pufendorf, defined adverse possession this way: "whoever has continued the possession of a thing for the period prescribed by law ... has something added to

him which he has thus far lacked."¹⁰ By possessing territory, one could become the sovereign over it.

Adverse Possession was a two-edged sword. It allowed European powers to settle on and claim ownership of native lands; it was therefore another instrument of imperialism. But adverse possession also encouraged Europeans to negotiate agreements with indigenous peoples that could "prove" Indian approval of colonial settlement. By allowing a European monarch to settle peacefully in America, native tribes were enabling them to begin their adverse possession claims; in terms of the international law, they were silently conveying sovereignty to the newcomers. In Jamestown, for example, the English were intent on crowning the local Indian leader--Powhatan--"king" of the Indians. This action (which Powhatan submitted to reluctantly) defined his leadership as occurring under their rule.

There was yet another side to adverse possession. By accepting nominal European control in their areas, Indians were also clothing their own possessions in the mantle of European international law. This mantle did not interest Powhatan--they had to lean on his shoulders to crown him--but as rivalries intensified in the eighteenth century and native people became more dependent on Europeans for weapons and tools, it became more advantageous for Indians to strengthen their relationships with European monarchs. Indian leaders welcomed the treaty council as a ceremony of trade and friendship and they valued their alliances with Europeans because they could be a source of

security and wealth. That their actions ultimately were interpreted by European legal theorists as acts of surrender did not interest them.¹¹

The relationship of the Iroquois and the English in the eighteenth century provides the greatest example of mutual reinforcement. The English grew increasingly dependent on the Mohawks and, through them, the entire Iroquois council to provide assistance against the French and access to the Great Lakes fur trade. For their part the Iroquois relied on the English to supply them with trade goods and to reward their leaders. The mark of the power of that alliance was, first, the terror with which American leaders contemplated the Iroquois alliance with Great Britain in the American Revolution, and, second, the wholesale transfer of the Six Nations, under the leadership of the Mohawk Joseph Brant, to the Grand River in Ontario after the war.¹²

The treaties that the Continental Congress, the Confederation government and the new American states negotiated with Indian groups prior to 1789 were extensions of colonial practice. They were intended to win the loyalty of the groups involved (and therefore to make some claim to be sovereigns over them), and they were intended to secure military alliances for the purpose of defending themselves against the British. In a very real sense, therefore, the governments within the new United States inherited the obligations of the British crown in 1783 when the Peace of Paris transferred the territory east of the

Mississippi to its former colony.

By maintaining its alliances and treaty commitments to the Indians of eastern North America, the United States was also maintaining its claim to sovereignty over this entire area. Recall that 90% of the property transferred to the new nation by the Treaty of Paris was in Indian hands. The American colonies had yet to breach the Appalachians. Just as treaties were a statement of federal authority over the states, they were a continuing way to justify American sovereignty over a region coveted by both the Spanish and the English. If the senators sitting in New York in 1789 had ignored the Fort Harmar treaties, for example, or encouraged the state of Georgia to take whatever action it pleased with regard to the Creeks, the English in the Great Lakes or the Spanish in Florida could have intervened in defense of an embattled tribal leadership without risking the wrath of the federal government. Treaties maintained the adverse possession claims of the United States and pre-empted outside intervention in what the Americans argued were, at least in the international arena, internal disputes.

In the aftermath of the Seven Years War, the struggle between England and France which resulted in the French expulsion from North America, the British Crown issued the Proclamation of 1763. The Proclamation is generally recalled as a contributor to the American revolution because it prohibited American settlers from purchasing lands beyond the Appalachians without imperial consent. Also important, however, is the rationale the document

gives for that limit. American settlers must remain east of the mountains, the Crown declared, because it was its intention to reserve the western land "under our sovereignty, protection and dominion ... for the use of the Indians." Within the British empire, the Crown would be sovereign, even to the extent that it would "reserve" unexplored and uncharted lands "for the use" of the tribes.

By continuing British practice after the Revolution, the Americans carried on this fiction. The Treaty of Paris completely ignored Indian claims to sovereignty, as did the Louisiana Purchase, the Treaty of Ghent which ended the War of 1812, and the treaties which transferred Florida from Spain to the United States. Treaties with Indian tribes were a recognition of native leadership and a statement of national obligation to indigenous people, but they did not in themselves affect diplomacy between European powers.

Treaties were a product of the international diplomacy of the colonial era and the political crosscurrents of the early republic.

But Why were there so many of them? Why did the Americans maintain the practice of negotiating treaties with Indians for so long after the threat of foreign intervention or military defeat had subsided? First, of course, the "system" worked and became routine. Commissioners were dispatched, agreements were reached, and the documents were ratified. Indian leaders valued the leverage negotiations gave them and profited from the rewards

which were generally included in the treaty provisions for themselves and their friends. "Treaty chiefs" were people who gained recognition at the negotiations and came to rely on the federal relationship.

Second, the federal monopolization of Indian affairs proved to be an orderly way to acquire native lands. Federal authority was first tested in Congress by legislators who opposed Washington's preference for treaties, and later in the courts by those who wished to acquire tribal lands without congressional authorization. This issue came before the U.S. Supreme Court in 1823 in Johnson and Graham's Lessee v. William McIntosh. Johnson was a settler who had acquired his land directly from a group of Illinois and Piankeshaw chiefs who later sold the same parcel to the United States in a treaty. Federal officials then issued homestead patents to McIntosh. Johnson sued to establish his title based on the fact that the Piankeshaw chiefs had sold the land to him first.

In his opinion for the court, Justice John Marshall ruled against pioneer Johnson, declaring that federal supremacy in Indian affairs could not be overturned by enterprising chiefs or adventuresome woodsmen. Marshall recognized that the tribes had the right to occupy and enjoy their lands without federal interference, but he noted that their peaceful presence within the boundaries of the United States was a tacit recognition of federal sovereignty and control. Adverse possession was still at work and still benefitting the Europeans. Because the United

States maintained its sovereign position over the Piankeshaw lands, the tribe's chiefs could only sell their land to the federal government.

Like so many other of Marshall's federalist decisions, Johnson v. McIntosh linked the power of national authority to the individualistic ambitions of his day. In the wake of Johnson, treaty commissioners and the General Land Office were able to keep up with the demand for more land by using the treaty system to reduce the size of Indian country and turn over new territories to homesteaders. By standing behind the treaty system, the courts became the facilitators, rather than opponents, of national expansion.

The great exception to the smooth routing of dispossession by treaty came in Georgia where an aggressively anti-Indian state government and tenacious Cherokee leaders spent a decade locked in battle. The state wanted the Indians out, but the Indians refused to agree to a land sale treaty. In the end, the federal government had neither the power nor the will to resist Georgia's onslaught, but significantly, the Cherokees were removed from Georgia only after a treaty signed by a small minority of the tribe was negotiated and signed. Despite its obvious illegality, the Treaty of New Echota was filed with its brethren and helped form the legal arena now known as "Indian law."¹³

A last flurry of treatymaking took place in California and on the Great Plains just before the practice was ended by congressional resolution in 1871. These treaties harked back to

the eighteenth century where federal officials were concerned more with border chaos and expensive war than they were with the prerogatives of tribal governments. The California treaties--most of which were not ratified by Congress because they were believed to be too generous--were frankly drawn up to create safe havens for native people who were being gunned down in the swirl of the gold rush. The Plains agreements were produced by a series of Peace commissions who were trying to insure the construction of a transcontinental railroad and prevent a protracted guerilla war. Again, treaties were a useful format for they allowed federal officials to pre-empt local politicians while giving their actions a veneer of ideological purity. For many tribal leaders, the treaties gave them some basis for claiming authority over their communities, a claim that was difficult to make in a period of warfare, intense hardship and dislocation.

After Congress declared in 1871 that no more treaties would be negotiated or signed, federal officials continued to make "agreements" with tribes that the courts have subsequently declared to have the same force as actual treaties. These documents attest to the practical value of treaty-making in the federal system. The agreements generally provide for land sales and other concessions and they validate both federal power and the role of the Indian leaders who negotiated them.

If this review ended here, a student would be correct in asking--what about those Wisconsin protestors? We can understand

why there were treaties in the first place, and why treaty-making continued into the nineteenth century, but why are treaties being enforced today? Why aren't they simply ignored or repealed?

One answer to this question is that they have been. The recognition of treaty rights by the courts is a product of recent events in both Indian history and the history of American society. For much of the twentieth century, Indian people tried in vain to get the government to recognize the legitimacy of their treaty claims. The low point came in 1903 when a young graduate of one of the country's horrible boarding schools for Indians returned home to the Kiowa reservation and learned that Congress had sold a portion of the tribe's land without its consent. An 1867 treaty between the Kiowas and the United States had stipulated that all future land sales would require tribal approval. Drawing on his newly-acquired knowledge of civics and English, Delos Lone Wolf persuaded his uncle (a man called Lone Wolf) to file suit in federal court to have the land sale stopped.

Lone Wolf v. Hitchcock quickly moved to the Supreme Court which announced its decision in 1903. On the issue of whether or not Congress could override an Indian treaty, the Court was clear:

Plenary authority over tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government.

... The power exists to abrogate the provisions of an Indian treaty.¹⁴

During this era, the courts tolerated challenges to Indian hunting and fishing rights, upheld federal jurisdiction over law and order within Indian communities, and rejected efforts by the so-called "Civilized Tribes" tribes to prevent the abolition of their governments prior to the creation of the state of Oklahoma.¹⁵

Why did things change? Answering this question draws us and our students into the broader history of American society in the twentieth century. For that reason, a complete answer is not possible here. Nevertheless, the place where the answer might lie can be identified if one asks the question this way: "What happened between 1903 and 1990 that would make treaty rights attractive again?" The discussion above should demonstrate that treaties have no inherent power over Indian-white relations. They are the product of both diplomatic reality and the internal political history of the American state. As such, treaties have taken on different meanings at different times for particular historical reasons. In addition to providing recognition for Indian leaders in the international arena, treaties were a convenient support for imperial claims. They also propped up tribal leaders, elevated federal authorities over their rivals in the states, and slapped the hands of greedy land speculators. What purpose might treaties be serving today?

Two answers suggest themselves.

First, beginning in the 1920s there appeared a new generation of Indian leaders who understood that the American legal system could be an instrument for the protection of minority populations. Their first inclination was to file suit against the United States in the Court of Claims for violations of treaty agreements and other injuries. Many of these claims invoked the argument that treaties conveyed certain "rights" to Indians which had been violated by subsequent government action. The most famous of the claims cases was filed by the Teton Sioux bands in the 1920s and ultimately decided in their favor by the U.S. Supreme Court in 1980. Claims cases provided tribal leaders with visibility, experience, and some successes.

In the 1930s, congress authorized the Indian Reorganization Act, a law which granted reservation communities the right to organize their own governments. By the 1950s many of these governments were vehicles for community action as well as community governance. Tribal governments lobbied for the right to control their own schools, to run their own police departments, and to engage in ambitious economic development schemes. The story of modern tribal governments and their gradual accretion of power is long and complex, but for our purposes it is useful to observe that it was in 1959 that the United States Supreme Court responded to an white man who sued a Navajo for debt in state court by declaring that tribal courts had original jurisdiction over such matters. While created by federal policymakers in the twentieth century, these courts

traced their authority to the Navajo government which had been recognized in treaties with the United States. The court's decision was the first recognition of the idea of tribal sovereignty in the modern era and the first of more than 80 decisions it would render in the the field of Indian affairs during the next 35 years.¹⁶

The way the modern Supreme Court's has combined a reliance on treaties, federal policy and the history of Indian-white relations is exemplified by this discussion of tribal sovereignty in one of its most far-reaching recent decisions, U.S. v. Wheeler, decided on March 22, 1978:

Before the coming of the Europeans, the tribes were self-governing sovereign political communities ... Like all sovereign bodies, they then had inherent power to prescribe laws for their members and to punish infractions of those laws.

Indian tribes, are, of course, no longer possessed of the full attributes of sovereignty ... Their incorporation within the territory of the United States, and their acceptance of its protection, necessarily divested them of some aspects of the sovereignty which they had previously exercised. By specific treaty provision they yielded up other sovereign powers; by statutes, in the exercise of its plenary control, Congress has removed still others.

But our cases recognize that the Indian tribes have not given up their full sovereignty ... The sovereignty that the

tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance. But until Congress acts, the tribes retain their existing sovereign powers.¹⁷

In the context of this decision, treaties become crucial indicators of what powers tribes have retained and which they have given up. Fishing rights, water rights, mineral rights, rights to dance, to worship, make license plates, to hold bingo games, to sell cigarettes or fishing licenses--all of these things are either "in" or "out" of that crucial bag of rights the tribes have retained. The Wheeler decision was both the culmination of decades of legal struggle, and the opening tribes needed for even more ambitious demands.

The court's phrase, "until Congress acts," points to the other change that has allowed a renaissance in Indian sovereignty to occur. As the ethnic and racial composition of Congress has changed after World War II, the possibility that congressional leaders will seek to suppress tribal culture has diminished. It is still accurate to describe Congress as largely white and male and perhaps WASP to boot, but in the aftermath of the New Deal and its coalition of ethnic politicians, the civil rights movement, and the women's movement, Indian tribal governments and tribal claims can be viewed as legitimate interests in the policymaking process. A century ago, the Chairman of the Senate Committee on Indian Affairs was Henry L. Dawes of Pittsfield, Massachusetts, a pious free-soiler who helped found the

Republican party in his state and who served as pall-bearer at Abraham Lincoln's funeral. Today it is Daniel Inouye of Honolulu, a second generation Japanese American who led the overthrow of white Republican rule in Hawaii's territorial legislature in 1954 and has been a loyal Great Society Democrat ever since.

Finally, how can we reconcile treaties and the constitution's promise of equal rights for all? In trying to make sense of treaties today two elements seem crucial.

First, treaties are a part of our legal culture. They have a long history, they have been repeatedly recognized. They are on the books. They therefore represent a stable system; they carry the weight of precedent and the past. In addition to the prestige that comes with age, is a moral weight. Treaties, as Charles Wilkinson has written, are promises. While technically and legally treaties can be broken--there do come times when countries, even great countries must break their word--our presumption is that the nation's word should be kept. Both because they are old and because they contain solemn vows, treaties cannot be dismissed lightly. Their moral claim is therefore comparable to other moral claims on the constitution--the claim that it protect our right of free speech or our right to equal protection under the law. To break a treaty is to break both a promise to Indians and a promise we all make to each other that in America, the protections of the constitution are immutable.

The second point to make about treaties and the constitution is that for Indian people treaties have become symbols of community allegiance. People affiliate with tribes by choice. Indian people who fish or hunt or sell bingo cards or tax energy companies in accord with their treaty rights do so because they choose to participate in Indian communities. Treaties reflect a part of their cultural identity and are a tangible sign of their most personal commitments. The recognition of treaties in the constitution is therefore a recognition of the right of Indian people to affiliate as they have for centuries. They are a mark of their individual freedom. The modern recognition of treaties rejects the nineteenth century idea that Indians could do whatever they wished as long as they emulated the Euro-American majority. Limiting treaty rights, then, places limits on the freedoms of Native Americans.

Because Indians are the only people specifically mentioned in the constitution, because their claims have a moral content, and because treaties reflect their chosen form of affiliation which the United States has frequently tried to suppress, there is no inconsistency between a recognition of treaty rights and a defense of the constitution. Treaties began as an instrument used by weak and outnumbered Europeans to facilitate and manage their entry into North America; the fact that they are now an instrument wielded by weak and outnumbered Native Americans to facilitate and manage their passage through the legal culture of the United States should not render them invalid. Their

persistence should offer hope to those who believe in rational and honorable solutions to human conflicts.

Endnotes

1.Kerr, p.20

2.Quoted in F.P. Prucha, Documents of United States Indian Policy (Lincoln: University of Nebraska Press, 1975), 246.

3. While similarities exist between the United States and Canada, the existence of the Proclamation of 1763 as a force in Canadian law and the absence of a strong sense of divided sovereignty in Canadian politics seem to me to be determinative. For a brief description of the Canadian situation, see Olive Patricia Dickason, Canada's First Nations: A History of Founding Peoples From Earliest Times (Norman: University of Oklahoma Press, 1992), 187-191 and 339-354.

4.American State Papers: Indian Affairs, I, p.13.

5.Linda Grant Depauw, editor, Senate Executive Journal and Related Documents (Baltimore: Johns Hopkins University Press, 1974), I, 31.

6.Linda Depauw, ed., Senate Executive Journal, p.41.

7.American State Papers: Indian Affairs, I, 13-14.

8.Ibid., p.14.

9.Henry Steele Commager, ed., Documents of American History, 9th edition (Englewood Cliffs, N.J.: Prentice Hall, 1973), I, 2-3.

10.L.C. Green and Olive P. Dickason, The Law of Nations and the New World (Edmonton: University of Alberta, 1989), 63.

11.For a recent exposition of the interplay between Native American leaders and European (particularly French) states, see Richard White, The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815 (New York: Cambridge University Press, 1991).

12. The mutual dependence of Englishmen and Iroquois people is the central theme of The Ambiguous Iroquois Empire by Francis Jennings (New York: Norton, 1984).

13.For an overview of the Jackson era see Ronald N. Satz, American Indian Policy in the Jacksonian Era (Lincoln: University of Nebraska Press, 1975).

14.187 U.S. Reports, 550-570.

15.Ward v. Race Horse; Kagama;
U.S. v. Winans
Stephens

16.For a summary of this history, see Charles F. Wilkinson,
American Indians, Time and the Law: Native Societies in a Modern
Constitutional Democracy (New Haven: Yale University Press,
1987).

17.F.P. Prucha, The Great Father: The United States Government
and the American Indians (Lincoln: University of Nebraska Press,
1984), 1187-1188.

PART TWO. TWO TREATIES AS DOCUMENTS FOR CLASSROOM USE

As documents, treaties offer both an introduction to the history of Indian-white relations, and a window on a particular moment in American history. As the introductory essay argues, however, it is difficult to understand the language of a treaty if it is removed from its context. For this reason, the following documents present two of the most famous Indian treaties--the Treaty of Greenville, signed in 1795 and the 1868 Fort Laramie Treaty--with a large array of supporting materials. Each document is reproduced in a format that should make it easy to reproduce and discuss with students. Each is introduced by a narrative and a set of related documents. Teachers can excerpt from this material the items they find most pertinent to their courses. Those desiring more background or wanting to assemble a reading list for a more detailed examination of the Greenville and Laramie treaties should consult the following sources:

General:

Berkhofer, Robert F., Jr., The White Man's Indian: Images of the American Indian From Columbus to the Present (New York: Alfred A. Knopf, 1978).

Deloria, Vine, Jr., and Lytle, Clifford, The Nations Within: The Past and Future of American Indian Sovereignty (New York: Pantheon, 1984).

Hoxie, Frederick E., Indians in American History: An Introduction (Arlington Hts, IL: Harlan Davidson, 1988).

Prucha, Francis Paul, The Great Father: The United States and the American Indian (Lincoln: University of Nebraska Press, 1984).

The Treaty of Greenville:

Calloway, Colin G., Crown and Calumet: British-Indian Relations, 1783-1815 (Norman: University of Oklahoma Press, 1987).

Dowd, Gregory Evans, A Spirited Resistance: The North American Indian Struggle For Unity, 1745-1815 (Baltimore: Johns Hopkins University Press, 1992).

Edmunds, R. David, The Shawnee Prophet (Lincoln: University of Nebraska Press, 1983)

Tanner, Helen Hornbeck, et al, The Atlas of Great Lakes Indian History (Norman: University of Oklahoma Press, 1986).

White, Richard, The Middle Ground: Indians, Empires and Republics in the Great Lakes Region, 1650-1815 (New York: Cambridge University Press, 1991).

The 1868 Fort Laramie Treaty:

DeMallie, Raymond J., The Sixth Grandfather: Black Elk's Teachings Given to John G. Neihardt (Lincoln: University of Nebraska Press, 1984).

Lazarus, Edward, Black Hills, White Justice: The Sioux Nation vs. the United States, 1775 to the Present (New York: Harper Collins, 1991).

Olson, James C., Red Cloud and the Sioux Problem (Lincoln: University of Nebraska Press, 1965).

Utley, Robert M., The Indian Frontier of the American West, 1846-1890 (Albuquerque: University of New Mexico Press, 1984).

A. The Treaty of Greenville, 1795

Introduction

During the 1780s and 1790s, the "Ohio Country," a large crescent of land wrapping around the southern shore of the Great Lakes from modern Pittsburgh to St. Louis, was a major zone of interaction between American Indians and the United States. The region had been drawn into the revolutionary war through the efforts of Joseph Brandt and his "Virginia" adversaries. Brandt, a Mohawk leader who rallied most of his Iroquois kinsmen to the side of the British, struggled to assemble an alliance of tribes to oppose the rebel government, while Americans with expansionist dreams pushed over the Appalachians to "settle" the fertile lands of modern Kentucky and Ohio. Often described generically by the Indians as "Virginians," these people supported the revolution because it promised to open new territories for settlement. Brandt maintained a delicate alliance with leaders of the Ohio tribes--Eries, Shawnees, Miamis, Peorias, Potawatchmis and others--because they feared Iroquois domination as much as they resented land-hungry whites. Following the Treaty of Paris these same groups continued to battle for advantage. Brandt retreated increasingly to his new home on the Grand River in Ontario, but he and the British offered the Ohio tribes both supplies and encouragement. The Americans turned to their state and national governments for similar support.

Because of the considerations described in Chapter I--military

weakness, an empty treasury, and a desire to present the United States as a nation of law-abiding republicans--American officials attempted to expand the area of white settlement by negotiation rather than war. The organization of the Northwest Territory in 1787 put this desire into legal form, but its provisions for eventual statehood in the area were also a magnet for settlers and a spur to additional conflict. By 1790, border conflicts were a regular part of life along the Ohio river.

Despite continuing friction, U.S. officials attempted to implement a policy of federal supervision over Indian affairs and to enforce a separation of Native and white communities. In addition to a succession of treaties with Ohio tribes, Federalist politicians supported a series of Trade and Intercourse Acts, first passed in 1790, which established regulations for trading with Indians and prohibited state officials from acquiring tribal land without federal approval. The Americans came to the Treaty of Greenville with a variety of goals--expansion, border tranquility, holding down federal expenses, a desire to appear morally superior--and all of their objectives would be served by a stable agreement. A treaty represented a way of controlling the situation in the Ohio valley without denying the wishes of the frontiersmen or retreating from a defense of federal power.

But what would a treaty represent to Indian people? Here one runs a risk of generalizing unfairly, but the leaders who gathered at Greenville in 1795 had at least a century of experience in dealing with powerful outsiders. More important, Native leaders had

developed a system of diplomacy to facilitate inter-tribal relations long before the arrival of Europeans on the continent. The best known of these systems was the Iroquois confederacy, an alliance of five New York groups which was based on both kinship and elaborate ritual. In the fourteenth and fifteenth centuries this confederacy had arisen to extinguish internecine warfare and to create the most powerful military force in North America.

In the colonial era, the Indian people of the Northeast were organized into kinship societies. Family ties held both social and political relationships together. Leaders were thought of as "fathers," "mothers" or "elders," and leaders were expected to rule from a sense of family obligation rather than legal authority. Diplomacy was an extension of this idea, and adversaries were frequently called "brother" or "father" in the course of negotiations. Similarly, newcomers or special friends would be welcomed into a community through the metaphor of adoption--given presents and addressed as kin. Formal talks between leaders were therefore filled with ritual and language that would invoke a familial sense of hospitality, generosity, and benevolence. One reached agreement orally, in the spirit of newly-bonded kinship, rather than on paper or parchment. And one enforced agreements through a sense of common obligation and shared identity rather than through appeals to something as impersonal as the "rule of law."

As Richard White demonstrates in The Middle Ground, colonial diplomacy combined the kin-based rituals of Indians and European

power politics. Native American protocols of ceremony, gift-giving and the establishment of quasi-kin relationships were observed, but the final act was usually confirmed by a written agreement. Despite the creation and persistence of this "middle ground," or meeting place between cultures, the overlap of differing world views also created problems. For Indians, the saying goes, "the treaty was the council." That is, the relationships made and celebrated at the treaty grounds were held to be superior to whatever might have been written by European scribes in a foreign language. (Treaties were never written in native languages.) For whites, the treaty was the written document. If difficulties arose after the council, one could look up the appropriate treaty provision and enforce obedience with soldiers.

In the century prior to Greenville, both sides worked to sustain this hybrid, American "middle ground" version of diplomacy. Europeans worked to develop and sustain relationships with tribal leaders that would create a sense of familial obligation and pay off in commerce or on the battle field. Native leaders understood the power they could accumulate by speaking for an entire Indian nation. By making and keeping agreements they would enhance their standing both within their own communities and with outsiders. Over time, treaties could even establish a group as a nation where perhaps none had previously been recognized. Without overstating this case, it is clear that both the Iroquois and the Creeks benefited from the European perception of them as worthy diplomatic partners.

In the eighteenth century a series of treaty networks developed in the interior regions of North America. The relationship of the Iroquois and the English has been discussed frequently in the historical literature and is referred to in chapter one above. But while pivotal, this relationship was not unique. For example, treaties tied the tribes of the Upper Great Lakes to the French, the Creeks to the Spanish, the Choctaws to the French enclaves at Mobile and New Orleans, and the tribes of the Southwest to the Spanish. In each instance, counter efforts by rival powers--the English in the Great Lakes, the French in the Southeast, etc.--allowed Native leaders to play off one outsider against another. Such opportunities expanded as the century wore on, because the European powers accelerated their rivalries while colonial and state governments entered the arena.

In Ohio, these general forces found a local stage. During the 1780s, as the English withdrew to their Great Lakes forts and relocated their military headquarters to Canada, the Americans advanced from their bases along the Ohio River. By 1790 a series of treaties had been signed which created "boundaries" between Indian and white settlements. The Delawares, Miamis, and Shawnees withdrew to the north and west, maintaining several towns along the Maumee and Sandusky Rivers, from present day Fort Wayne to Sandusky Bay on Lake Erie. American raiding and Indian retaliation continued, however, and the tribes refused to give up any more territory. Their resistance brought on two disastrous American expeditions in 1790 and 1791. (The second of these produced the

..
greatest Indian military victory in American history when 1,000 warriors destroyed an army of 1,400 lead by Major General Arthur St. Clair. 657 of St. Clair's men died that day, nearly three times the casualties at the Little Bighorn.) In the wake of these battles, the Ohio tribes vowed to seek British support for their common fight together against the Americans while the United States organized a new army of 2,000 regular troops and 1,000 volunteers under the command of General Anthony Wayne.

In the Spring of 1794 Wayne lead his troops to the confluence of the Maumee and Auglaize Rivers, the site of a trader's town called The Glaize, and erected Fort Defiance. At the same time the British erected Fort Miami near the mouth of the Maumee, the site of modern Toledo, Ohio. Unfortunately for the Ohio Indians, however, Fort Miami refused their requests for assistance and Wayne pressed forward. In August of that year he won his famous victory at Fallen Timbers over a divided and dispirited enemy force. In the fall he turned back up the Maumee River and founded Fort Wayne at its headwaters. Wayne's successful 1794 offensive prompted both the Americans and several tribal leaders to return to diplomacy. A group of Miami chiefs approached the General under a flag of truce and by the new year Wayne had issued an invitation to all the Delawares, Ottawas, Miamis, Wyandots, Ojibwes, Potawatomis and Shawnees to gather at Fort Greenville the following June for a peace conference.

In the six month interval between these initial contacts and the opening of negotiations in June, a major diplomatic event

intervened to alter the balance of power in the Great Lakes region. In London, on November 19, Chief Justice John Jay concluded a treaty with the British Foreign Minister. The Jay Treaty settled a series of issues that had remained outstanding at the conclusion of the American Revolution. Prominent among these was the continued British occupation of Detroit and other Great Lakes forts that lay within the boundaries of the United States. While Jay's agreement made a series of concessions to Great Britain that American politicians later condemned, its pledge that "His Majesty will withdraw all his troops and garrisons from all posts and places within the boundary lines assigned by the treaty of peace to the United States" greatly strengthened General Wayne's hand when he sat down with tribal leaders.

By the end of June, 1795, bands of Delawares, Ottawas, Miamis, Ojibwes and Potawatomis had arrived at Greenville. Each delegation was welcomed with a ceremony of friendship and gifts of food. By July 3, Wayne decided to open the proceedings. He did so with a brief speech, but the conference was delayed further so all could celebrate Independence Day and to await the arrival of the Wyandots and Shawnees. Formal negotiations began on July 15, with Wayne proposing a treaty line that would open most of Ohio to white settlement. He also proposed a series of military reservations at key points within the territory remaining under Indian control. While calling for great concessions from the assembled tribes, Wayne was careful to observe all the protocol of the treaty ground. Indian requests for food were honored; delays were granted to await

important chiefs; and the various delegations all granted the right to swear in their own interpreters.

By July 20, all the delegations were present. The last to arrive were the Shawnees who announced that they came straight from Joseph Brandt's Six Nations reserve in Ontario. Wayne argued that the new boundary line would simply extend the borders established by earlier treaties, while many of the tribal leaders testified that they had never agreed to those agreements. On the 23rd Wayne replied to these complaints with a long speech that both pledged peace and quoted liberally from the new Jay Treaty. Wayne neglected to mention that the U.S. Senate had yet to ratify the agreement, insisting instead that it marked the end of British influence in the Great Lakes. The following day the American General presented a large wampum belt symbolizing friendship to Tarhe, leader of the Wyandots, the group traditionally accorded the right to speak first at confederacy councils. The next day he gave similar belts to leaders of the Shawnees and others.

Individual delegations began meeting with American negotiators during the last days of July and Wayne promised them that he would allow the tribes to work out their internal boundaries among themselves. On July 30th the entire assembly voted to conclude a treaty of peace. The Kickapoos conveyed the white calumet of peace to the General by way of Little Turtle, the Miami chief, and Wayne adjourned the proceedings to prepare a final draft of the agreement. Yet another delegation of Shawnees arrived from Detroit on July 31, but they clearly had no good news for the assembled

Indian leaders and they readily followed the decisions of the council. The Americans distributed gifts and silver peace medals to all the delegations before the final signing ceremony on August 3.

Despite the fact that most scholars denigrate the Greenville Treaty as a document which simply formalized Anthony Wayne's victory at Fallen Timbers, the agreement represented perhaps the last expression of diplomacy on the American "middle ground." Despite his military success, Wayne was intent on preventing further conflict between settlers and Indians by establishing a firm border in the Great Lakes. Native American leaders bargained as forcefully as they could, but were undercut by the British retreat from Ohio and their own internal divisions. Nevertheless, their willingness to bargain and their dark warnings that further incursions would only bring more war, prevented the Americans from overreaching their hand. Wayne knew that he had carried the day at Fallen Timbers without having destroyed the military potential of the confederacy. The resulting agreement prevented war in the area for more than fifteen years.

Despite the achievements of the Greenville Treaty, white expansion into Indian lands continued and American officials refused to resist it. New Indian leaders such as the Shawnee Prophet and his brother Tecumseh emerged to rally the tribes to yet another confederacy, while land speculators and politicians called for new boundaries, and the British began to hint that they might return to their abandoned posts. In 1803, the context of the Ohio

disputes suddenly shifted, however, when the United States announced that it had acquired the Louisiana Territory from France. The purchase doubled the size (and dreams) of American leaders and separated the Indians even farther from potential European patrons. The result was a gradual, and later inexorable, campaign to push back the boundaries established in 1795 and, finally, to remove all the major tribes to "unsettled" areas west of the Mississippi.

The following documents reflect major aspects of this narrative of the Greenville Treaty. Brief introductions will raise issues to consider with students and colleagues.

1. Treaty of Tordesillas, June 7, 1494	p. 47
2. Proclamation of 1763	p. 50
3. Treaty of Paris, 1783	p. 58
4. Treaty with the Six Nation, 1784	p. 65
5. Jay Treaty, 1794	p. 68
6. Treaty of Greenville, 1795	p. 78
7. Treaty with the Miami, 1818	p. 90

SOURCES:

All U.S. treaty texts are from Charles J. Kappler, editor, Indian Treaties, 1778-1883 (Ameron House: Mattituck, New York, 1972), original edition published in 1904. The 1889 Sioux Agreement can be found in U.S. Statutes At Large, 50 Congress, II Session, p.888-899.

All other documents are from Henry Steele Commager, editor, Documents of American History, 9th edition (Englewood Cliffs, New Jersey: Prentice-Hall, 1973).

THE TREATY OF TORDESILLAS

June 7, 1494

(The first territorial dispute following Pope Alexander VI's Bull Inter Caetera arose because King John of Portugal worried that it might infringe on his exploration of Africa. A treaty was therefore negotiated by John and his Spanish neighbors that established an eastern boundary for Columbus's "discoveries." As a result, the Portuguese later claimed--and were granted--the rights to settle in Brazil on lands that this treaty inadvertently had "granted" to them. The document thus demonstrates the significance of European arrangements despite the fact that when they were made, they did not involve any known people or place.)

....Whereas a certain controversy exists between the said lords, their constituents, as to what lands, of all those discovered in the ocean sea up to the present day, the date of this treaty, pertain to each one of the said parts respectively; therefore, for the sake of peace and concord, and for the preservation of the relationship and love of the said King of Portugal for the said King and Queen of Castile, Aragon, etc. it being the pleasure of their Highnesses, they ... covenanted and agreed that a boundary or straight line be determined and drawn north and south, from pole to pole, on the said ocean sea, from the Arctic to the Antarctic

pole. This boundary or line shall be drawn straight, as foresaid, at a distant of three hundred and seventy leagues west of the Cape Verde Islands, being calculated by degrees.... And all lands, both islands and mainlands, found and discovered already, or to be found and discovered hereafter, by the said King of Portugal and by his vessels on this side of the said line and bound determined as above, toward the east, in either north or south latitude, on the eastern side of the said bound, provided the said bound is not crossed, shall belong to and remain in the possession of, and pertain forever to, the said King of Portugal and his successors. And all other lands, both islands and mainlands, found or to be found hereafter,... by the said King and Queen of Castile, Aragon, etc. and by their vessels, on the western side of the said bound, determined as above, after having passed the said bound toward the west, in either its north or south latitude, shall belong to... the said King and Queen of Castile, Leon, etc. and to their successors.

Item, the said representatives promise and affirm... that from this date no ships shall be dispatched--namely as fellows: the said King and Queen of Castile, Leon, Aragon etc. for this part of the bound... which pertains to the said King of Portugal... nor the said King of Portugal to the other side of the said bound which pertains to the said king and Queen of Castile, Aragon, etc.--for the purpose of discovering and seeking any mainlands or islands, or for the purpose of trade, barter, or conquest of any kind. But should it come to pass that the said ships of the said King and Queen of Castile....on sailing thus on this side of the said bound,

should discover any mainlands or islands in the region pertaining, as above said, to the said King of Portugal, such mainlands or islands shall belong forever to the said King of Portugal and his heirs, and their Highnesses shall order them to be surrendered to him immediately. And if the said ships of the said King of Portugal discover any islands or mainlands in the regions of the said King and Queen of Castile... all such lands shall belong to and remain forever in the possession of the said King and Queen of Castile...and their heirs, and the said King of Portugal shall cause such lands to be surrendered immediately....

And by this present agreement, they...entreat our most Holy Father that his Holiness be pleased to confirm and approve this said agreement, according to what is set forth therein; and that he order his bulls in regard to it to be issued to the parties or to whichever of the parties may solicit them with the tenor of this agreement incorporated therein, and that he lay his censures upon those who shall violate or oppose it at any time whatsoever....

THE PROCLAMATION OF 1763

October 7, 1763

(Issued in the aftermath of the British victory over France in the Seven Years War, this declaration was intended to quiet the anxieties of the Indian allies who had been so important to the Crown's victory, as well as to contain the ambitions of colonial governments along the Atlantic Coast. In addition to these practical considerations, however, the Proclamation spelled out the sovereign's interpretation of Indian land tenure. The document positioned the British government as the protector of an Indian right to occupy their territories, not as an allied sovereign.)

Whereas we have taken into our royal consideration the extensive and valuable acquisitions in America secured to our Crown by the late definitive treaty of peace concluded at Paris the 10th day of February last; and being desirous that all our loving subjects, as well of our kingdom as of our colonies in America, may avail themselves, with all convenient speed, of the great benefits and advantages which must accrue therefrom to their commerce, manufactures, and advice of our Privy Council, to issue this our Royal Proclamation, hereby to publish and declare to all our loving subjects that we have, with the advice of our said Privy Council, granted our letters patent under our Great Seal of Great

Britain, to erect within the countries and islands ceded and confirmed to us by the said treaty, four distinct and separate governments, styled and called by the names of Quebec, East Florida, West Florida, and Grenada, and limited and bounded as follows, viz:

First, the government of Quebec, bounded on the Labrador coast by the river St. John and from thence by a line drawn from the head of that river, through the lake St. John, to the South end of the lake Nipissing; from whence the said line, crossing the river St. Lawrence and the Lake Champlain in 45 degrees of North latitude, passes along the High Lands, which divide the rivers that empty themselves into the said river St. Lawrence, from those which fall into the sea; and also along the North coast of the Bayes des Chaleurs, and the coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the mouth of the river St. Lawrence by the West end of the island of Anticosti, terminates at the aforesaid river St. John.

Secondly, The government of East Florida, bounded to the Westward by the Gulph of Mexico and the Apalachicola river; to the Northward, by a line drawn from that part of the said river where the Catahoochee and Flint rivers meet, to the source of St. Mary's river, and by the course of the said river to the Atlantic Ocean; and to the East and South by the Atlantic Ocean, and the Gulph of Florida, including all islands within six leagues of the sea coast.

Thirdly, The government of West Florida, bounded to the Southward by the Gulph of Mexico, including all islands within six

leagues of the coast from the river Apalachicola to lake Pontchartrain; to the Westward by the said lake, the lake Maurepas, and the river Mississippi; to the Northward, by a line drawn due East from that part of the river Mississippi which lies in thirty-one degrees North latitude, to the river Apalachicola, or Catahoochee; and to the Eastward by the said river.

Fourthly, The government of Grenada, comprehending the island of that name, together with the Grenadines, and the islands of Dominico, St. Vincent, and Tobago.

And to the end that the open and free fishery of our subjects may be extended to, and carried on upon the coast of Labrador and the adjacent islands, we have thought fit ... to put all that coast, from the river St. John's to Hudson's Streight's, together with the islands of Anticosti and Madelane, and all other smaller islands lying upon the said coast, under the care and inspection of our governor of Newfoundland.

We have also ... thought fit to annex the islands of St. John and Cape Breton, or Isle Royale, with the lesser islands adjacent thereto, to our government of Nova Scotia.

We have also ... annexed to our province of Georgia, all the lands lying between the rivers Atamaha and St. Mary's.

And ... we have ... given express power and direction to our governors of our said colonies respectively, that so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of our council, summon and call general assemblies within the said

governments respectively, in such manner and form as is used and directed in those colonies and provinces in America, which are under our immediate government; and we have also given power to the said governors, with the consent of our said councils, and the representatives of the people, so to be summoned as aforesaid, to make constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of our said colonies, and of the people and inhabitants thereof, as near as may be, agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies; and in the mean time, and until such assemblies can be called as aforesaid, all persons inhabiting in, or resorting to, our said colonies, may confide in our royal protection for the enjoyment of the benefit of the laws of our realm of England: for which purpose we have given power under our great seal to the governors of our said colonies respectively, to erect and constitute, with the advice of our said councils respectively, courts of judicature and public justice within our said colonies, for the hearing and determining all causes as well criminal as civil, according to law and equity, and as near as may be, agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentence of such courts, in all civil cases, to appeal, under the usual limitations and restrictions, to us, in our privy council.

And whereas it is just and reasonable, and essential to our interest and the security of our colonies, that the several nations or tribes of Indians with whom we are connected, and who live under

our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded to or purchased by us, are reserved to them, or any of them, as their hunting-grounds; we do therefore, with the advice of our Privy Council, declare it to be our royal will and pleasure, that no Governor or commander in chief, in any of our colonies of Quebec, East Florida, or West Florida, do presume, upon any pretence whatever, to grant warrants of survey, or pass any patents for lands beyond the bounds of their respective governments, as described in their commissions; as also that no Governor or commander in chief of our other colonies or plantations in America do presume for the present, and until our further pleasure be known, to grant warrants of survey or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west or northwest; or upon any lands whatever, which, not having been ceded to or purchased by us, as aforesaid, are reserved to the said Indians, or any of them.

And we do further declare it to be our royal will and pleasure, for the present as aforesaid, to reserve under our sovereignty, protection, and dominion, for the use of the said Indians, all the land and territories not included within the limits of our said three new governments, or within the limits of the territory granted to the Hudson's Bay Company; as also all the land and territories lying to the westward of the sources of the rivers which fall into the sea from the west and northwest as

aforesaid; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved, without our special leave and license for that purpose first obtained.

And we do further strictly enjoin and require all persons whatever, who have either wilfully or inadvertently seated themselves upon any lands within the countries above described, or upon any other lands which, not having been ceded to or purchased by us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such settlements.

And whereas great frauds and abuses have been committed in the purchasing lands of the Indians, to the great prejudice of our interests, and to the great dissatisfaction of the said Indians; in order, therefore, to prevent such irregularities for the future, and to the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent, we do, with the advice of our Privy Council, strictly enjoin and require, that no private person do presume to make any purchase from the said Indians of any lands reserved to the said Indians within those parts of our colonies where we have thought proper to allow settlement; but that if at any time any of the said Indians should be inclined to dispose of the said lands, the same shall be purchased only for us in our name, at some public meeting or assembly of the said Indians, to be held for that purpose by the Governor or commander in chief of our colony respectively within

which they shall lie: and in case they shall lie within the limits of any proprietary government, they shall be purchased only for the use and in the name of such proprietaries, conformable to such directions and instructions as we or they shall think proper to give for that purpose. And we do, by the advice of our Privy Council, declare and enjoin, that the trade with the said Indians shall be free and open to all our subjects whatever, provided that every person who may incline to trade with the said Indians do take out a license for carrying on such trade, from the Governor or commander in chief of any of our colonies respectively where such person shall reside, and also give security to observe such regulations as we shall at any time think fit, by ourselves or commissaries to be appointed for this purpose, to direct and appoint for the benefit of the said trade. And we do hereby authorize, enjoin, and require the Governors and commanders in chief of all our colonies respectively, as well those under our immediate government as those under the government and direction of proprietaries, to grant such licenses without fee or reward, taking especial care to insert therein a condition that such license shall be void, and the security forfeited, in case the person to whom the same is granted shall refuse or neglect to observe such regulations as we shall think proper to prescribe as aforesaid.

And we do further expressly enjoin and require all officers whatever, as well military as those employed in the management and direction of Indian affairs within the territories reserved as

..
aforesaid, for the use of the said Indians, to seize and apprehend all persons whatever who, standing charged with treasons, misprisions of treason, murders, or other felonies or misdemeanors, shall fly from justice and take refuge in the said territory, and to send them under a proper guard to the colony where the crime was committed of which they shall stand accused, in order to take their trial for the same.

Given at our Court at St. James's the 7th day of October 1763,
in the third year of our reign.

TREATY OF PEACE WITH GREAT BRITAIN

September 3, 1783

(Following the surrender of the British forces at Yorktown, Virginia in October, 1781, the military conflict between Great Britain and her colonies came to an end. During 1782 officials of the mother country began to negotiate a peace treaty with a group of American diplomats lead by John Adams and Benjamin Franklin. There are, of course many dimensions to the story of the peace conference and the treaty, but for historians of Native America, three points are most important. First, the British renounced their sovereign claims and transferred its authority over the territory of the United States to the rebel government. Indians were neither recognized nor mentioned. Second, all discussion of restitution and reconciliation referred to white settlers, not Indians. There was no mechanism established for Native Americans to file claims against the new United States for property seized or destroyed during the war. Finally, the agreement created a legal world inhabited by only two sovereigns, the United States and Great Britain. Neither the British nor the Americans would be compelled to recognize aboriginal peoples in their mutual dealings and legal arrangements.)

.....Art. I.--His Britannic Majesty acknowledges the said United States, viz. New Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign and independent States; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the Government, proprietary and territorial rights of the same, and every part thereof.

Art. II.--And that all disputes which might arise in future, on the subject of the boundaries of the said United States may be prevented. it is hereby agreed and declared, that the following are, and shall be their boundaries, viz.: From the northwest angle of Nova Scotia, viz.: that angle which is formed by a line drawn due north from the source of Saint Croix River to the Highlands; along the said Highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean, to the northwesternmost head of Connecticut River; thence down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataraquy; thence along the middle of said river into Lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie, through the middle of said lake until it arrives at the water communication between that lake and Lake

Huron; thence along the middle of said water communication into the Lake Huron, thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior northward of the Isles Royal and Phelipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most northwestern point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude. South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the Equator, to the middle of the river Appalachicola or Catahouche; thence along the middle thereof to its junction with the Flint River; thence straight to the head of St. Mary's River; and thence down along the middle of St. Mary's River to the Atlantic Ocean. East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid Highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall

respectively touch the Bay of Fundy and the Atlantic Ocean; excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia.

Art. III.--It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulph of Saint Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island) and also on the coasts, bays and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbour and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlements, without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground.

Art. IV.--It is agreed that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money, of all bona fide debts heretofore contracted.

Art. V.--It is agreed that the Congress shall earnestly recommend it to the legislatures of the respective States, to

provide for the restitution of all estates, rights and properties which have been confiscated, belonging to real British subjects, and also of the estates, rights and properties of persons resident in districts in the possession of His Majesty's arms, and who have not borne arms against the said United States. And that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months, unmolested in their endeavours to obtain the restitution of such of their estates, rights and properties as may have been confiscated; and that Congress shall also earnestly recommend to the several States a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation which, on the return of the blessings of peace, should universally prevail. And that Congress shall also earnestly recommend to the several States, that the estates, rights and properties of such last mentioned persons, shall be restored to them, they refunding to any persons who may be now in possession, the bona fide price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights or properties, since the confiscation. And it is agreed, that all persons who have any interest in confiscated lands, either by debts, marriage settlements or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

Art. VI.--That there shall be no future confiscations made,

nor any prosecutions commenced against any person or persons for, or by reason of the part which he or they may have taken in the present war; and that no person shall, on that account, suffer any future loss or damage, either in his person, liberty or property; and that those who may be in confinement on such charges, at the time of the ratification of the treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued.

Art. VII.--There shall be a firm and perpetual peace between His Britannic Majesty and the said States, and between the subjects of the one and the citizens of the other, wherefore all hostilities, both by sea and land, shall from henceforth cease; All prisoners on both sides shall be set at liberty, and His Britannic Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons and fleets from the said United States, and from every post, place and harbour within the same; leaving in all fortifications the American artillery that may be therein; And shall also order and cause all archives, records, deeds and papers, belonging to any of the said States, or their citizens, which, in the course of the war, may have fallen into the hands of his officers, to be forthwith restored and deliver'd to the proper States and persons to whom they belong.

Art. VIII.--The navigation of the river Mississippi, from its source to the ocean, shall forever remain free and open to the

subjects of Great Britain, and the citizens of the United States.

Art. IX.--In case it should so happen that any place or territory belonging to Great Britain or to the United States, should have been conquer'd by the arms of either from the other, before the arrival of the said provisional articles in America, it is agreed, that the same shall be restored without difficulty, and without requiring any compensation....

(Negotiated at Fort Stanwix in Iroquois country in the aftermath of the Treaty of Paris, this agreement was the American peace treaty with tribes that had fought with the British. In exchange for peace and "protection," the assembled representatives of the Oneidas and Mohawks agreed to cede all of their lands west and north of the Ohio. Neither group had ever exercised authority over these lands, so the agreement was the clever end of the British fiction that the Iroquois were "lords" of the western lands. Their empire, questionable at best earlier in the eighteenth century, certainly had no meaning in 1784. Nevertheless, with this legal document in hand the Indian signatories could claim clear title to their New York homeland and the American diplomats could justify war against Shawnees, Wyandots and others who refused to recognize the claims of the United States to Ohio. Similar agreements were signed over the next five years, setting the stage for military conflicts between the Ohio tribes and the Americans.)

TREATY WITH THE SIX NATIONS, 1784

Articles concluded at Fort Stanwix, on the twenty-second day of October, one thousand seven hundred and eighty-four, between

Oliver Wolcott, Richard Butler, and Arthur Lee, Commissioners
Plenipotentiary from the United States, in Congress assembled,
on the one Part, and the Sachems and Warriors of the Six
Nations, on the other.

The United States of America give peace to the Senecas,
Mohawks, Onondagas and Cayugas, and receive them into their
protection upon the following conditions:

ARTICLE I.

Six hostages shall be immediately delivered to the
commissioners by the said nations, to remain in possession of the
United States, till all the prisoners, white and black, which were
taken by the said Senecas, Mohawks, Onondagas and Cayugas, or by
any of them, in the late war, from among the people of the United
States, shall be delivered up.

ARTICLE II.

The Oneida and Tuscarora nations shall be secured in the
possession of the lands on which they are settled.

ARTICLE III.

A line shall be drawn, beginning at the mouth of a creek about
four miles east of Niagara, called Oyonwayea, or Johnston's
Landing-Place, upon the lake named by the Indians Oswego, and by
us Ontario; from thence southerly in a direction always four miles
east of the carrying-path, between Lake Erie and Ontario, to the
mouth of Tehoseroron or Buffaloe Creek on Lake Erie; thence south
to the north boundary of the state of Pennsylvania, thence west to

the end of the said north boundary; thence south along the west boundary of the said state, to the river Ohio; the said line from the mouth of the Oyonwayea to the Ohio, shall be the western boundary of the lands of the Six Nations, so that the Six Nations shall and do yield to the United States, all claims to the country west of the said boundary, and they shall be secured in the peaceful possession of the lands they inhabit east and north of the same, reserving only six miles square round the fort of Oswego, to the United States, for the support of the same.

ARTICLE IV.

The Commissioners of the United States, in consideration of the present circumstances of the Six Nations, and in execution of the humane and liberal views of the United States upon the signing of the above articles, will order goods to be delivered to the said Six Nations for their use and comfort.

THE JAY TREATY

November 19, 1794

(Negotiated by Supreme Court Justice John Jay, this treaty with Great Britain was intended to resolve a number of disputes remaining from the Revolutionary War. Most prominent in the minds of Ohio settlers and their Native American adversaries was the fact that for a decade the British had ignored their pledge to evacuate their posts on American soil. Several provisions of the treaty provoked protests by President Washington's congressional opponents, but Article II, pledging British withdrawal from the Great Lakes posts, was most popular. It obviously strengthened Wayne's hand at Greenville, despite the fact that it remained unratified until after the treaty council had begun. The Jay Treaty also continued the practice, begun with the Treaty of Paris, of ignoring tribal claims to sovereignty in North America even though Article III recognized the rights of individuals to pass freely between British and American territory.)

Art. I. There shall be a firm, inviolable and universal peace,

and a true and sincere friendship between his Britannic Majesty, his heirs and successors, and the United States of America; and between their respective countries, cities, towns and people of every degree, without exception of persons or places.

Art. II. His Majesty will withdraw all his troops and garrisons from all posts and places within the boundary lines assigned by the treaty of peace to the United States. This evacuation shall take place on or before (June 1, 1796,)...: The United States in the mean time at their discretion, extending their settlements to any part within the said boundary line, except within the precincts of jurisdiction of any of the said posts. All settlers and traders within the precincts or jurisdiction of the said posts, shall continue to enjoy, unmolested, all their property of every kind, and shall be protected therein. They shall be at full liberty to remain there, or to remove with all or any part of their effects; and it shall also be free to them to sell their lands, houses, or effects, or to retain the property thereof, at their discretion; such of them as shall continue to reside within the said boundary lines, shall not be compelled to become citizens of the United States, or to take any oath of allegiance to the government thereof; but they shall be at full liberty so to do if they think proper, and they shall make and declare their election within one year after the evacuation aforesaid. And all persons who shall continue there after the expiration of the said year, without having declared their intention of remaining subjects of his Britannic Majesty, shall be considered as having elected to become

citizens of the United States.

Art. III. It is agreed that it shall at all times be free to his Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America (the country within the limits of the Hudson's Bay Company only excepted) and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other.... The river Mississippi shall, however, according to the treaty of peace, be entirely open to both parties; and it is further agreed, that all the ports and places on its eastern side, to whichever of the parties belonging, may freely be resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of his Majesty in Great-Britain....

Art. IV. Whereas it is uncertain whether the river Mississippi extends so far to the northward, as to be intersected by a line to be drawn due west from the Lake of the Woods, in the manner mentioned in the treaty of peace...it is agreed, that measures shall be taken...for making a joint survey of the said river from one degree of latitude below the falls of St. Anthony, to the principal source or sources of the said river, and also of the parts adjacent thereto; and that if on the result of such survey, it should appear that the said river, would not be intersected by such a line as is above mentioned, the two parties will thereupon

proceed by amicable negotiation, to regulate the boundary line in that quarter,...

Art. V. Whereas doubts have arisen what river was truly intended under the name of the river St. Croix, mentioned in the said treaty of peace, and forming a part of the boundary therein described; that question shall be referred to the final decision of commissioners to be appointed....The said commissioners shall, by a declaration, under their hands and seals, decide what river is the river St. Croix, intended by the treaty....And both parties agree to consider such decision as final and conclusive, so as that the same shall never thereafter be called into question, or made the subject of dispute or difference between them.

Art. VI. Whereas it is alleged by divers British merchants and others his Majesty's subjects, that debts, to a considerable amount, which were bona fide contracted before the peace, still remain owing to them by citizens or inhabitants of the United States, and that by the operation of various lawful impediments since the peace, not only the full recovery of the said debts has been delayed, but also the value and security thereof have been, in several instances, impaired and lessened, so that by the ordinary course of judicial proceedings, the British creditors cannot now obtain, and actually have and receive full and adequate compensation for the losses and damages which they have thereby sustained. It is agreed, that in all such cases, where full compensation for such losses and damages cannot, for whatever reason, be actually obtained, had and received by the said

creditors in the ordinary course of justice, the United States will make full and complete compensation for the same to the said creditors: But it is distinctly understood, that this provision is to extend to such losses only as have been occasioned by the lawful impediments aforesaid,...

Art. VII. Whereas complaints have been made by divers merchants and others, citizens of the United States, that during the course of the war in which his Majesty is now engaged, they have sustained considerable losses and damage, by reason of irregular or illegal captures or condemnations of their vessels and other property, under colour of authority or commissions from his Majesty, and that from various circumstances belonging to the said cases, adequate compensation for the losses and damages so sustained cannot now be actually obtained, had and received by the ordinary course of judicial proceedings; it is agreed, that in all such cases, where adequate compensation cannot, for whatever reason be now actually obtained, had and received by the said merchants and others, in the ordinary course of justice, full and complete compensation for the same will be made by the British government to the said complainants. But it is distinctly understood, that this provision is not to extend to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimant....

Art. X. Neither the debts due from individuals of the one nation to individuals of the other, nor shares, nor monies which they may have in the public funds, or in the public or private

banks, shall ever in any event of war or national differences be sequestered or confiscated....

Art. XI. It is agreed between his Majesty and the United States of America, that there shall be a reciprocal and entirely perfect liberty of navigation and commerce between their respective people, in the manner, under the limitations and on the conditions specified in the following articles:

(Art. XII., relating to trade with the West Indies, was suspended.)

Art. XIII. His Majesty consents that the vessels belonging to the citizens of the United States of America, shall be admitted and hospitably received, in all the sea-ports and harbour of the British territories in the East-Indies. And that the citizens of the said United States, may freely carry on a trade between the said territories and the said United States, in all articles of which the importation or exportation respectively, to or from the said territories, shall not be entirely prohibited.... The citizens of the United States shall pay for their vessels when admitted into the said ports no other or higher tonnage-duty that shall be payable on British vessels when admitted into the ports of the United States. And they shall pay no other or higher duties or charges, on the importation or exportation of the cargoes of the said vessels, than shall be payable on the same articles when imported or exported in British vessels. But it is expressly agreed, that the vessels of the United States shall not carry any of the articles exported by them from the said British territories,

to any port or place, except to some port or place in America, where the same shall be unladen, and such regulations shall be adopted by both parties, as shall from time to time be found necessary to enforce the due and faithful observance of this stipulation. It is also understood that the permission granted by this article, is not to extend to allow the vessels of the United States to carry on any part of the coasting-trade of the said British territories; not vessels going with their original cargoes, or part thereof, from one port of discharge to another, are not to be considered as carrying on the coasting-trade. Neither is this article to be construed to allow the citizens of the said states to settle or reside within the said territories, or to go into the interior parts thereof, without the permission of the British government established there....

Art. XIV. There shall be between all the dominions of his Majesty in Europe and the Territories of the United States, a reciprocal and perfect liberty of commerce and navigation. The people and inhabitants of the two countries respectively, shall have liberty freely and securely, and without hindrance and molestation, to come with their ships and cargoes to the lands, countries, cities, ports, places and rivers, within the dominions and territories aforesaid, to enter into the same, to resort there, and to remain and reside there, without any limitation of time. Also to hire and possess houses and warehouses for the purposes of their commerce, and generally the merchants and traders on each side, shall enjoy the most complete protection and security for

their commerce; but subject always as to what respects this article to the laws and statutes of the two countries respectively.

Art. XV. It is agreed that no other or higher duties shall be paid by the ships or merchandize of the one party in the ports of the other, than such as are paid by the like vessels or merchandize of all other nations. Nor shall any other or higher duty be imposed in one country on the importation of any articles the growth, produce or manufacture of the other, than are or shall be payable on the importation of the like articles being of the growth, produce, or manufacture of any other foreign country. Nor shall any prohibition be imposed on the exportation or importation of any articles to or from the territories of the two parties respectively, which shall not equally extend to all other nations....

The two parties agree to treat for the more exact equalization of the duties on the respective navigation of their subjects and people, in such manner as may be most beneficial to the two countries.... In the interval it is agreed, that the United States will not impose any new or additional tonnage duties on British vessels, nor increase the now-subsisting difference between the duties payable on the importation of any articles in British or in American vessels....

Art. XVII. It is agreed, that in all cases where vessels shall be captured or detained on just suspicion of having on board enemy's property, or of carrying to the enemy any of the articles which are contraband of war; the said vessel shall be brought to

the nearest or most convenient port; and if any property of an enemy should be found on board such vessel, that part only which belongs to the enemy shall be made prize, and the vessel shall be at liberty to proceed with the remainder without any impediment....

Art. XIX. And that more abundant care may be taken for the security of the respective subjects and citizens of the contracting parties, and to prevent their suffering injuries by the men of war, or privateers of either party, all commanders of ships of war and privateers, and all others the said subjects and citizens, shall forbear doing any damage to those of the other party, or committing any outrage against them, and if they act to the contrary, they shall be punished, and shall also be bound in their persons and estates to make satisfaction and reparation for all damages, and the interest thereof, of whatever nature the said damages may be....

Art. XXII. It is expressly stipulated, that neither of the said contracting parties will order or authorize any acts of reprisal against the other, on complaints of injuries or damages, until the said party shall first have presented to the other a statement thereof, verified by competent proof and evidence, and demanded justice and satisfaction, and the same shall either have been refused or unreasonably delayed.

Art. XXVI. If at any time a rupture should take place, (which God forbid) between his Majesty and the United States, the merchants and others of each of the two nations, residing in the dominions of the other, shall have the privilege of remaining and

continuing their trade, so long as they behave peaceably, and commit no offence against the laws; and in case their conduct should render them suspected, and the respective governments should think proper to order them to remove, the term of twelve months from the publication of the order shall be allowed them for that purpose, to remove with their families, effects and property; but this favour shall not be extended to those who shall act contrary to the established laws:...

TREATY WITH THE WYANDOT, ETC. 1795 AT GREENVILLE, OHIO

(This is the final text of the treaty negotiated by Anthony Wayne and tribal leaders at Greenville. Students should pay particular attention to Article III where the sixteen separate cessions are made to the United States outside the disputed territory in modern Ohio. These vital points, which included Mackinac Island, Detroit, the future site of Chicago, and strategic trading posts as far west as the Mississippi, were intended to insure continued American domination of the Great Lakes region. The list in Article III provides both a lesson in the geographical perspective of people who relied on river transportation, and a glimpse of the Americans' ambitions. Note also that the United States made it clear in Article V that the tribes were barred from selling their land in the future to anyone but the federal government. This in effect established American sovereignty over tribal lands.)

A treaty of peace between the United States of America and the Tribes of Indians, called the Wyandots, Delawares, Shawnees, Ottawas, Chippewas, Patawatimes, Miames, Ed-river, Weea's Kickapoos, Piankashaws, and Kaskaskias.

To put an end to a destructive war, to settle all controversies, and to restore harmony and a friendly intercourse between the said United States, and Indian tribes; Anthony Wayne, Major-General, commanding the army of the United States, and sole commissioner for the good purposes above-mentioned, and the said tribes of Indians, by their Sachems, chiefs, and warriors, met together at Greenville, the headquarters of the said army, have agreed on the following articles, which, when ratified by the President, with the advice and consent of the Senate of the United States, shall be binding on them and the said Indian tribes.

ARTICLE I.

Henceforth all hostilities shall cease; peace is hereby established, and shall be perpetual; and a friendly intercourse shall take place, between the said United States and Indian tribes.

ARTICLE II.

All prisoners shall on both sides be restored. The Indians, prisoners to the United States, shall be immediately set at liberty. The people of the United States, still remaining prisoners among the Indians, shall be delivered up in ninety days from the date hereof, to the general or commanding officer at Greenville, Fort Wayne or Fort Defiance; and ten chiefs of the said tribes shall remain at Greenville as hostages, until the delivery of the prisoners shall be effected.

ARTICLE III.

The general boundary line between the lands of the United States, and the lands of the said Indian tribes, shall begin at the mouth of Cayahoga river, and run thence up the same to the portage between that and the Tuscarawas branch of the Muskingum; thence down that branch to the crossing place above Fort Lawrence; thence westerly to a fork of that branch of the great Miami river running into the Ohio, at or near which fort stood Loromie's store, and where commences the portage between the Miami of the Ohio, and St. Mary's river, which is a branch of the Miami, which runs into Lake Erie; thence a westerly course to Fort Recovery, which stands on a branch of the Wabash; then south-westerly in a direct line to the Ohio, so as to intersect that river opposite the mouth of the Kentucky or Cuttawa river. And in consideration of the peace now established; of the goods formerly received from the United States; of those now to be delivered, and of the yearly delivery of goods now stipulated to be made hereafter, and to indemnify the United States for the injuries and expenses they have sustained during the war; the said Indians tribes do hereby cede and relinquish forever, all their claims to the lands lying eastwardly and southwardly of the general boundary line now described; and these lands, or any part of them, shall never hereafter be made a cause or pretence, on the part of the said tribes or any of them, of war or injury to the United States, or any of the people thereof.

And for the same considerations and as an evidence of the returning friendship of the said Indian tribes, of their confidence

in the United States, and desire to provide for their accommodation, and for that convenient intercourse which will be beneficial to both parties, the said Indian tribes do also cede to the United States the following pieces of land; to-wit. (1.) One piece of land six miles square at or near Loromie's store before mentioned. (2.) One piece two miles square at the head of the navigable water or landing on the St. Mary's river, near Girty's town. (3.) One piece six miles square at the head of the navigable water of the Au-Glaize river. (4.) One piece six miles square at the confluence of the Au-Glize and Miami rivers, where Fort Defiance now stands. (5.) One piece six miles square at or near the confluence of the rivers St. Mary's and St. Joseph's where Forth Wayne now stands, or near it. (6.) One piece two miles square on the Wabash river at the end of the portage from the Miami of the lake, and about eight miles westward from Fort Wayne. (7.) One piece six miles square at the Ouatanon or old Weea towns on the Wabash river. (8.) One piece twelve miles square at the British fort on the Miami of the lake at the foot of the rapids. (9.) One piece six miles square at the mouth of the said river where it empties into the Lake. (10.) One piece six miles square upon Sandusky lake, where a fort formerly stood. (11.) One piece two miles square at the lower rapids of Sandusky river. (12.) The post of Detroit and all the land to the north, the west and the south of it, of which the Indian title has been extinguished by gifts or grants to the French or English governments; and so much more land to be annexed to the district of Detroit as shall be comprehended

between the river Rosine on the south, lake St. Clair on the north, and a line, the general course whereof shall be six miles distant from the west end of lake Erie, and Detroit river. (13.) The post of Michillimackinac, and all the land on the island, on which that post stands, and the main land adjacent, of which the Indian title has been extinguished by gifts or grants to the French or English governments: and a piece of land on the main (land?) to the north of the island, to measure six miles on lake Huron, or the strait between lakes Huron and Michigan, and to extend three miles back from the water of the lake or strait, and also the island De Bois Blanc, being an extra and voluntary gift of the Chippewa nation. (14.) One piece of land six miles square at the mouth of Chikago river, emptying into the south-west end of Lake Michigan, where a fort formerly stood. (15.) One piece twelve miles square at or near the mouth of the Illinois river, emptying into the Mississippi. (16.) One piece six miles square at the old Piorias fort and village, near the south end of the Illinois lake on said Illinois river: And whenever the United States shall think proper to survey and mark the boundaries of the lands hereby ceded to them, they shall give timely notice thereof to the said tribes of Indians, that they may appoint some of their wise chiefs to attend and see that the lines are run according to the terms of this treaty.

And the said Indian tribes will allow to the people of the United States a free passage by land and by water, as one and the other shall be found convenient, through their country, along the

chain of posts herein before mentioned; that is to say, from the commencement of the portage aforesaid at or near Loromie's store, thence along said portage to the St. Mary's and down the same to Fort Wayne, and then down the Miami to lake Erie: again from the commencement of the portage at or near Loromie's store along the portage from thence to the river Au-Glaize, and down the same to its junction with the Miami at Fort Defiance: again from the commencement of the portage aforesaid, to Sandusky river, and down the same to Sandusky by and lake Erie, and from Sandusky to the post which shall be taken at or near the foot of the rapids of the Miami of the lake: and from thence to Detroit. Again from the mouth of Chikago, to the commencement of the portage, between that river and the Illinois, and down the Illinois river to the Mississippi, also from Fort Wayne along the portage aforesaid which leads to the Wabash, and then down the Wabash to the Ohio. And the said Indian tribes will also allow to the people of the United States the free use of the harbors and mouths of rivers along the lakes adjoining the Indian lands, for sheltering vessels and boats, and liberty to land their cargoes where necessary for their safety.

ARTICLE IV.

In consideration of the peace now established and of the cessions and relinquishments of lands made in the preceding article by the said tribes of Indians, and to manifest the liberality of the United States as the great means of rendering this peace strong and perpetual; the United States relinquish their claims to all other Indian lands north-ward of the river Ohio, eastward of the

Mississippi, and westward and southward of the Great Lakes and the waters uniting them, according to the boundary line agreed on by the United States and the king of Great Britain, in the treaty of peace made between them in the year 1783. But from this relinquishment by the United States, the following tracts of land, are explicitly excepted. 1st. The tract of one hundred and fifty thousand acres near the rapids of the river Ohio, which has been assigned to General Clark, for the use of himself and his warriors. 2d. The post of St. Vincennes on the river Wabash, and the lands adjacent, of which the Indian title has been extinguished. 3d. The lands at all other places in possession of the French people and other white settlers among them, of which the Indian title has been extinguished as mentioned in the 3d article: and 4th. The post of fort Massac towards the mouth of the Ohio. To which several parcels of land so excepted, the said tribes relinquish all the title and claim which they or any of them may have.

And for the same considerations and with the same views as above mentioned, the United States now deliver to the said Indian tribes a quantity of goods to the value of twenty thousand dollars, the receipt whereof they do hereby acknowledge: and henceforward every year forever the United States will deliver at some convenient place northward of the river Ohio, like useful goods, suited to the circumstances of the Indians, of the value of nine thousand five hundred dollars; reckoning that value at the first cost of the goods in the city or place in the United States, where they shall be procured. The tribes to which those goods are to be

annually delivered, and the proportions in which they are to be delivered, are the following.

1st. To the Wyandots, the amount of one thousand dollars. 2d. To the Delawares, the amount of one thousand dollars. 3d. To the Shawanese, the amount of one thousand dollars. 4th. To the Miamis, the amount of one thousand dollars. 5th. To the Ottawa, the amount of one thousand dollars. 6th. To the Chippewas, the amount of one thousand dollars. 7th. To the Putawatimes, the amount of one thousand dollars. 8th. And to the Kickapoo, Weea, Eel-river, Piankashaw and Kaskaskias tribes, the amount of five hundred dollars each.

Provided, That if either of the said tribes shall hereafter at an annual delivery of their share of the goods aforesaid, desire that a part of their annuity should be furnished in domestic animals, implements of husbandry, and other utensils convenient for them, and in compensation to useful artificers who may reside with or near them and be employed for their benefit, the same shall at the subsequent annual deliveries be furnished accordingly.

ARTICLE V.

To prevent any misunderstanding about the Indian lands relinquished by the United States in the fourth article, it is now explicitly declared, that the meaning of that relinquishment is this: The Indian tribes who have a right to those lands, are quietly to enjoy them, hunting, planting, and dwelling thereon so long as they please, without any molestation from the United States; but when those tribes, or any of them, shall be disposed

to sell their lands, or any part of them, they are to be sold only to the United States; and until such sale, the United States will protect all the said Indian tribes in the quiet enjoyment of their lands against all citizens of the United States, and against all other white persons who intrude upon the same. And the said Indian tribes again acknowledge themselves to be under the protection of the said United States and no other power whatever.

ARTICLE VI.

If any citizen of the United States, or any other white person or persons, shall presume to settle upon the lands now relinquished by the United States, such citizen or other person shall be out of the protection of the United States; and the Indian tribe, on whose land the settlement shall be made, may drive off the settler, or punish him in such manner as they shall think fit; and because such settlements made without the consent of the United States, will be injurious to the.. as well as to the Indians, the United States shall be at liberty to break them up, and remove and punish the settlers as they shall think proper, and so effect that protection of the Indian lands herein before stipulated.

ARTICLE VII.

The said tribes of Indians, parties to this treaty, shall be at liberty to hunt within the territory and lands which they have now ceded to the United States, without hindrance or molestation, so long as they demean themselves peaceably, and offer no injury to the people of the United States.

ARTICLE VIII.

Trade shall be opened with the said Indian tribes; and they do hereby respectively engage to afford protection to such persons, with their property, as shall be duly licensed to reside among them for the purpose of trade, and to their agents and servants; but no person shall be permitted to reside at any of their towns or hunting camps as a trader, who is not furnished with a license for the purpose, under the hand and seal of the superintendent of the department north-west of the Ohio, or such other person as the President of the United States shall authorize to grant such licenses; to the end, that the said Indians may not be imposed on in their trade. And if any licensed trader shall abuse his privilege by unfair dealing, upon complaint and proof thereof, his license shall be taken from him, and he shall be further punished according to the laws of the United States. And any person shall intrude himself as a trader, without such license, the said Indians shall take and bring him before the superintendent or his deputy, to be dealt with according to law. And to prevent impositions by forged licenses, the said Indians shall at least once a year give information to the superintendent or his deputies, of the names of the traders residing among them.

ARTICLE IX

Lest the firm peace and friendship now established should be interrupted by the misconduct of individuals, the United States, and the said Indian tribes agree, that for injuries done by individuals on either side, no private revenge or retaliation shall

take place; but instead thereof, complaint shall be made by the party injured, to the other: By the said Indian tribes, or any of them, to the President of the United States, or the superintendent by him appointed; and by the superintendent or other person appointed by the President, to the principal chiefs of the said Indian tribes, or the tribe to which the offender belongs; and such prudent measures shall then be pursued as shall be necessary to preserve the said peace and friendship unbroken, until the Legislature (or Great Council) of the United States, shall make other equitable provision in the case, to the satisfaction of both parties. Should any Indian tribes meditate a war against the United States or either of them, and the same shall come to the knowledge of the before-mentioned tribes, or either of them, they do hereby engage to give immediate notice thereof to the general or officer commanding the troops of the United States, at the nearest post. And should any tribe, with hostile intentions against the United States, or either of them, attempt to pass through their country, they will endeavor to prevent the same, and in like manner give information of such attempt, to the general or officer commanding, as soon as possible, that all causes of mistrust and suspicion may be avoided between them and the United States. In like manner the United States shall give notice to the said Indian tribes of any harm that may be meditated against them, or either of them, that shall come to their knowledge; and do all in their power to hinder and prevent the same, that the friendship between them may be uninterrupted.

ARTICLE X.

All other treaties heretofore made between the United States and the said Indian tribes, or any of them, since the treaty of 1783, between the United States and Great Britain, that come within the purview of this treaty, shall henceforth cease and become void.

In testimony whereof, the said Anthony Wayne, and the sachems and war chiefs of the beforementioned nations and tribes of Indians, have hereunto set their hands and affixed their seals.

Done at Greenville, in the territory of the United States northwest of the river Ohio, on the third day of August, one thousand seven hundred and ninety-five.

TREATY WITH THE MIAMI, 1818.

(This treaty represents the last Indian land cession in present-day Ohio. It is typical of a large number of treaties negotiated in the aftermath of the War of 1812, marking a new surge in American expansion. Under the terms of the agreement, the Miamis lost their lands in the northwest quarter of Ohio, receiving money, agricultural assistance and individual plots of land in return. The treaty allowed for the tribe's removal from Ohio; its formula was repeated many times over during the next two decades. The plots of land granted in the treaty were to be retained by individuals or village groups and carried restrictions on resale (a provision similar to restrictions on the sale of allotments which would be imposed at the end of the century in the West). Finally, students should read the descriptions of the grants to individual Miamis; their tone and content reflect the tribe's long association with French fur-traders and their ready adoption of EuroAmerican technology.)

Articles of a treaty made and concluded, at St. Mary's, in the State of Ohio, between Jonathan Jennings, Lewis Cass, and Benjamin Parke. Commissioners of the United States, and the Miami nation of Indians.

Art. 1. The Miami nation of Indians cede to the United States the following tract of country: Beginning at the Wabash river, where the present Indian boundary line crosses the same, near the mouth of Raccoon creek; thence, up the Wabash river, to the reserve at its head, near Fort Wayne; thence, to the St. Mary's river; thence, up the St. Mary's river, to the reservation at the portage; thence, with the line of the cession made by the Wyandot nation of Indians to the United States, at the foot of the Rapids of the Miami of Lake Erie, on the 29th day of September, in the year of our Lord one thousand eight hundred and seventeen, to the reservation at Loramie's store; thence, with the present Indian boundary line, to Fort Recovery; and, with the said line, following the courses thereof, to the place of beginning.

Art. 2. From the cession aforesaid the following reservations, for the use of the Miami nation of Indians, shall be made; one reservation, extending along the Wabash river, from the mouth of Salamanie river to the mouth of Eel river, and from those points, running due south, a distance equal to a direct line from the mouth of Salamanie river to the mouth of Eel river. One other reservation, of two miles square, on the river Salamanaie, at the mouth of Atchepongqwawe creek. One other reservation, of six miles square, on the Wabash river, below the forks thereof. One other reservation, of ten miles square, opposite the mouth of the river A Bouette. One other reservation, of ten miles square, at the village on Sugar Tree Creek. One other reservation, of two miles square, at the mouth of a creek, called Flat Rock, where the road

to White river crosses the same.

Art. 3. The United States agree to grant, by patent, in fee simple, to Jean Bapt. Richardville, principal chief of the Miami nation of Indians, the following tracts of land: Three sections of land, beginning about twenty-five rods below his house, on the river St. Mary's, near Fort Wayne; thence, at right angles with the course of the river, one mile; and from this line, and the said river, up the stream thereof, for quantity. Two sections, upon the east side of St. Mary's river, near Fort Wayne, running east one mile with the line of the military reservation; thence, from that line, and from the river, for quantity. Two sections, on the Twenty-seven mile creek, where the road from St. Mary's to Fort Wayne crosses it, being one section on each side of said creek.

Two sections on the left bank of the Wabash, commencing at the forks and running down the river.

The United States also agree to grant to each of the following persons, being Miami Indians by birth, and their heirs, the tracts of land herein described.

To Joseph Richardville and Joseph Richardville, jun. two sections of land, being one on each side of the St. Mary's river, and below the reservation made on that river by the treaty of Greenville, in 1795.

To Wemetche or the Crescent, one section, below and adjoining the reservation of Anthony Chesne, on the west side of the St. Mary's river, and one section immediately opposite to Macultamunqua of Black Loon.

To Keenquatakqua or Long Hair, Arizona or Twilight, Peconbequa or a Woman striking, Aughquamauda or Difficulty, and to Miaghqua or Noon, as joint tenants, five sections of land upon the Wabash river, the centre of which shall be the Wyandot village, below the mouth of Tippecanoe river.

To Francois Godfroy, six sections of land, on the Salamanie river, at a place called La Petite Prairie.

To Louis Godfroy, six sections of land, upon the St. Mary's river, above the reservation of Anthony Shane.

To Charley, a Miami chief, one section of land, on the west side of the St. Mary's river, below the section granted to Pemetché or the Crescent.

To the two eldest children of Peter Langlois, two sections of land, at a place formerly called Village du Puant, at the mouth of the river called Pauceaupichoux.

To the children of Antoine Bondie, two sections of land, on the border of the Wabash river, opposite a place called I'Esle a I'Aille.

To Francois Lafontaine and his son, two sections of land, adjoining and above the two sections granted to Jean Bapt. Richardville, near Fort Wayne, and on the same side of the St. Mary's river.

To the children of Antoine Rivarre, two sections of land, at the mouth of the Twenty-seven mile creek, and below the same.

To Peter Langlois' youngest child, one section of land, opposite the Chipaille, at the Shawnese village.

To Peter Labadie, one section of land, on the river St. Mary's, below the section granted to Charley.

To the son of George Hunt, one section of land, on the west side of the St. Mary's river, adjoining the two sections granted to Francois Lafontaine and his son.

To Meshenoqua or the Little Turtle, one section of land, on the south side of the Wabash, where the portage path strikes the same.

To Josette Beaubien, one section of land on the left bank of the St. Mary's, above and adjoining the three sections granted to Jean Bapt. Richardville.

To Ann Turner, a half-blooded Miami, one section of land on the northwest side of the Wabash river, to commence at the mouth of Fork creek, on the west bank of the said creek, and running up said creek one mile in a direct line, thence at right angles with this line for quantity.

To Rebecca Hackley, a half-blooded Miami, one section of land, to be located at the Munsey town, on White river, so that it shall extend on both sides to include three hundred and twenty acres of the prairie, in the bend of the river, where the bend assumes the shape of a horse shoe.

To William Wayne Wells, a half-blooded Miami, one section of land, at the mouth of the Fork creek, where the reservation for Ann Turner commences, running down the Wabash river on the northwest bank one mile; thence, back one mile; thence, east one mile, to the boundary line of the grant to Ann Turner.

To Mary Wells, a half-blooded Miami, one section of land, at the mouth of Stoney creek, on the southeast side of the Wabash river, the centre of which shall be at the mouth of said creek, running with the meanders thereof, up and down the Wabash river, one half mile, and thence back for quantity.

To Jane Turner Wells, a half-blooded Miami, one section of land, on the northwest side of the Wabash river, to commence on the west bank of said river, opposite the old lime kiln; thence, down the said river one mile and back for quantity.

Art. 4. The Miami nation of Indians assent to the cession made by the Kickapoos to the United States, by the treaty concluded at Vincennes, on the ninth day of December, one thousand eight hundred and nine.

Art. 5. In consideration of the cession and recognition aforesaid, the United States agree to pay to the Miami nation of Indians, a perpetual annuity of fifteen thousand dollars, which with all annuities which, by any former treaty, the United States have engaged to pay to the said Miami nation of Indians, shall be paid in silver.

The United States will cause to be built for the Miamis one gristmill and one saw-mill, at such proper sites as the chiefs of the nation may select, and will provide and support one blacksmith and one gunsmith for them, and provide them with such implements of agriculture as the proper agent may think necessary.

The United States will also cause to be delivered, annually, to the Miami nation, one hundred and sixty bushels of salt.

Art. 6. The several tracts of land which, by third article of this treaty, the United States have engaged to grant to the person therein mentioned, except the tracts to be granted to Jean Bapt. Richardville, shall never be transferred by the said persons or their heirs, without the approbation of the President of the United States.

Art. 7. This treaty shall be obligatory on the contracting parties after the same shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof.

In testimony whereof, the said Jonathan Jennings, Lewis Cass, and Benjamin Parke, commissioners as aforesaid, and the chiefs and warriors of the Miami nation of Indians, have hereunto set their hands, at St. Mary's the sixth day of October, in the year of our Lord one thousand eight hundred and eighteen.

B. The 1868 Fort Laramie Treaty

Introduction

Documents

1. Treaty with the Sioux, 1825 p. 105
2. Treaty of Fort Laramie with the Sioux, 1851 p. 110
3. Treaty with the Sioux-Brule, Oglala, Miniconjou,
Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two
Kettle, Sans Arc, and Santee-And Arapaho,
1868 (The Fort Laramie Treaty with the Sioux,
1868) p. 116
4. "THE SIOUX BILL", 1889 p. 131

Introduction

At the time of Columbus, people who spoke a set of related languages anthropologists have labelled "Siouan" stretched from the eastern seaboard to the western Great Lakes. The greatest concentration of Siouan speakers was near the headwaters of the Mississippi River in modern-day Minnesota. In the course of the sixteenth and seventeenth century three groups of Native Americans in this area formed and began to migrate slowly westward. The westernmost were the Lakota, or Teton Sioux, who crossed the Missouri River in the Dakotas sometime in the eighteenth century. Behind them were the Nakota, or Yankton Sioux who lived along both sides of the Missouri, and continuing along the western boundaries of the Great Lakes region were the Dakota, or Santee Sioux.

Speaking related dialects of the same language, these groups shared a series of cultural traits. They were band societies that lived in extended family units that came together periodically to trade and for social exchange. While concerned for family relationships and loyalties, the Sioux bands did not maintain a clear clan organization and avoided rigid leadership hierarchies. Several bands engaged in agriculture, but most of the western Sioux were buffalo hunters. All of the Sioux incorporated horses into their communities during the eighteenth century and engaged in the exchange of furs and hides for European manufactured goods.

The Santee, or Eastern Sioux were the first to have sustained contact with Anglo-Americans. They encountered settlers in Wisconsin and Minnesota in the first quarter of the nineteenth

century and signed a series of treaties with the United States that ceded lands to the national government in exchange for reserved territories and federal subsidies. As a result, their history followed a different path than their western kinsmen whose hunting grounds and homes were transferred to the United States without their knowledge or consent by the Louisiana Purchase.

Following the Louisiana Purchase, President Thomas Jefferson dispatched two veterans of the Ohio Valley campaigns, William Clark and Meriwether Lewis, to travel up the Missouri River and report back on the country's new lands. Their journey provided American officials with the first reliable information on the Yankton and Teton Sioux, but it had little immediate impact on the tribes themselves. Its most important effect was a reorientation of the Missouri River fur trade from Montreal to St. Louis. Within a few years, the French-Canadian traders and voyageurs who had dominated commerce along the Missouri for nearly a century were challenged by aggressive Americans who set out each spring from St. Louis.

The fur trade provided Sioux leaders with new products they could acquire in exchange for furs, and new tools with which they could win the support of their kinsmen and families. Thus, the expansion of the fur trade in the Missouri River valley and beyond in the early nineteenth century inspired the Sioux to expand their territories and to strengthen their hold on their hunting grounds. This expansion was most apparent among the seven Teton bands--the Oglala, Hunkpapa, Two Kettles, Sans Arcs, Blackfeet, Miniconjou and Brules--who lived west of the Missouri. By the 1830s, these groups

were raiding as far west as the Yellowstone Valley and the headwaters of the Platte.

In the 1820s, the expansion of American commercial interests and the acceleration of rivalries between tribal groups caused U.S. officials to be concerned with both the loyalty of the Plains tribes and the boundaries of their territories. Thus the first treaties negotiated by Teton Sioux leaders were simple pledges of loyalty and peaceful intent.

In 1849, decades of relatively relaxed, long-range diplomacy drew to an end when the war with Mexico and the discovery of gold in California set thousands to marching across the Plains. American officials were now concerned with the security of the emigrants as well as with the long-term future of the tribes. The gold rush not only drew non-Indians westward, it also marked the beginnings of a western commercial life based on something other than trade with indigenous people. (The successful launching of a Mormon colony in the Great Basin in 1847 only emphasized this point.) Not only were Indians becoming less important to white officials, but their lands, long thought to be simply a grass and sagebrush desert, were beginning to have economic value. The 1851 treaty signed at Fort Laramie by the Teton Sioux and many other western Plains groups represented an attempt to respond to these new conditions.

By 1868, the pace of American settlement had accelerated yet again. The completion of the Civil War and the rapid construction of the transcontinental railroad signaled a rapid rise in the

number of emigrants venturing into the transMississippi west. This proces was spurred on by gold strikes in Montana, Nevada and Colorado, and by the gradual expansion of non-Indian agriculture into the western portions of Kansas, Nebraska, and Texas. (In this connection it is important to recall that congress passed the Homestead Act in 1862 and that one of its most ardent supporters was Horace Greeley, the editor of the New York Tribune, and the man who urged his young readers to "go west and grow up with the country.")

For Indian people on the Plains, particularly the powerful Teton Sioux bands who had now lived for decades without major interference from the Americans and had never ceded lands to the United States, the accelerated pace of white expansion was most disturbing. The Yanktons, militarily weaker and already forced to cede their claims to land east of the Missouri in 1858, were more willing to compromise, but the Lakota were adamant. They insisted that the Americans continue to recognize their territory under the 1851 treaty and to treat them as fellow sovereigns. In the fall of 1865 representatives from all the Teton bands signed treaties of friendship with the United States at Fort Sully on the Missouri River, but these were primarily rhetorical agreements. The most powerful band leaders stayed away from these proceedings, and the new treaties did not address the most sensitive conflicts between the two groups.

The most important dispute between the Sioux and the United States at the end of 1865 was the Bozeman trail, road taken by

miners and settlers from Wyoming to Montana. The trail ran north from Fort Laramie on the Platte River, curved along the eastern front of the Big Horn mountains, and plunged westward into the Yellowstone valley. It ran through the heart of country reserved for the Teton bands in 1851, so when government representatives invited negotiations with Teton Sioux leaders for the purchase of a right of way for the road, the Oglalas under Red Cloud and others would hear none of it. Red Cloud and his followers broke off the talks and prepared for war.

While militarily superior on its home turf in the East, the U.S. Army was not prepared to fight a war in Wyoming and Montana against thousands of committed Sioux warriors. The nation was weary of bloodshed, and its heroic generals had little experience on the Plains. Acting in response to pressure from westerners, however, the military constructed three forts along the Bozeman trail in the summer and fall of 1866 and prepared to defend the miners who streaming northward from the Platte. Fort Reno stood near Pumpkin Buttes, Wyoming; Fort Phil Kearney was erected on the south fork of the Powder River near modern Sheridan, Wyoming, and Fort C.F. Smith guarded a crossing on the Big Horn River, south of the Yellowstone.

The forts were almost immediately surrounded by hostile war parties, and the soldiers within them found themselves under siege. The fall of 1866 was punctuated by a series of skirmishes, but large-scale fighting did not take place until December when Captain William B. Fetterman and eighty soldiers rode out of Fort Phil

Kearney to drive off a group of Oglalas who were harassing a detail of woodcutters. Within minutes the troop was cut off and surrounded; when the fighting ended, Fetterman and his entire command had been wiped out.

Fetterman's defeat and the virtual imprisonment of the American soldiers in their log forts made it clear to officials in Washington that securing the Bozeman trail would require significant (and expensive) federal presence on the Plains. Cries began almost immediately in Congress for a diplomatic solution to the crisis; these led in early 1867 to the creation of a special commission to investigate the Sioux conflict. One member of the commission, John B. Sanborn, predicted it would take a force of 25,000 men five to ten years to subdue the Tetons. The cost of such an operation would far exceed the total annual budget of the Office of Indian Affairs. Sanborn urged federal officials to be practical offering to negotiate a withdrawal from the Bozeman forts in exchange for the creation of a reservation for the hostile bands.

In July, 1867, the Republican dominated congress, preoccupied with Reconstruction and the impending impeachment of President Johnson, accepted Sanborn's recommendation. It authorized the negotiation of a new treaty with the various Sioux bands that would remove the causes of their complaints, protect the safety of transcontinental travelers, and provide for the long-term future of the Indians. The United States would not be going to war to avenge Fetterman or to defend Montana gold prospectors.

A group of treaty negotiators led by Civil War veteran William Tecumseh Sherman met with delegations of Sioux leaders in late 1867 and early 1868 and sent out word that they would be at Fort Laramie in the spring to negotiate a new treaty. A small group of "friendly" leaders, principally American Horse of the Oglalas and Spotted Tail of the Brules came to Laramie in April and May, but the other Sioux bands stayed away. A second series of meetings took place aboard the steamboat "Agnes" on the Missouri River in July. Here leaders of the Hunkpapas, Blackfeet Sioux, Two Kettles, Sans Arcs and Miniconjous agreed to terms with the commission. Among these terms was an American pledge to abandon the Bozeman trail forts, but Red Cloud and the bulk of the hostile Teton bands refused to meet with the commission until this promise had been carried out. The order was given to withdraw from the forts in September and on November 6 Red Cloud and Man Afraid of His Horses appeared at Fort Laramie to meet with representatives of the commission. Their signatures were the last--and the most important--to be added to the new treaty.

Congress ratified the new treaty on February 16, 1869, bringing the "Red Cloud War" to a formal end and formalizing the Sioux's success in halting the expansion of the United States into the northern plains. While subsequent events marked the gradual decline in the military and political power of the Sioux, the 1868 Fort Laramie treaty continues as a mark of the tribe's accomplishments and as a window on the complex history of Indian-white relations in the nineteenth century.

TREATY WITH THE SIOUX, 1825

(The first treaty with Teton Sioux bands, the 1825 agreement was a pledge of mutual friendship and a promise that each group would trade with the other. From the American perspective the treaty brought the Sioux into the orbit of the St. Louis traders and committed the Indians to reject any "foreigner" (i.e. Canadian) who offered to purchase their furs. Significantly, the treaty was signed by a group of "chiefs, headmen and warriors" rather than a formal tribal leadership for such did not exist. From the Sioux perspective, the agreement was binding on these individuals alone rather than on a corporate body. The American representatives at these negotiations, General Henry Atkinson and Agent Benjamin O'Fallon, had been sent up the Missouri at the urging of Missouri Senator Thomas Hart Benton, an ardent western booster and defender of the St. Louis fur traders.)

For the purpose of perpetuating the friendship which has heretofore existed, as also to remove all future cause of discussion or dissension, as it respects trade and friendship between the United States and their citizens, and the Sioune and Ogallala bands of the Sioux tribe of Indians, the President of the United States of America, by Brigadier-General Henry Atkinson, of the United States' Army, and Major Benjamin O'Fallon, Indian Agent, with full powers and authority, specially appointed and

commissioned for that purpose, of the one part, and the undersigned Chiefs, Head-men, and Warriors, of the said Sioune and Ogallala bands of Sioux Indians, on behalf of their bands, of the other part, have made and entered into the following articles and conditions, which, when ratified by the President of the United States, by and with the advice and consent of the Senate shall be binding on both parties,--to wit:

ARTICLE 1.

It is admitted by the Sioune and Ogallala bands of Sioux Indians, that they reside within the territorial limits of the United States, acknowledge their supremacy, and claim their protection. The said bands also admit the right of the United States to regulate all trade and intercourse with them.

ARTICLE 2.

The United States agree to receive the Sioune and Ogallala bands of Sioux into their friendship, and under their protection, and to extend to them, from time to time, such benefits and acts of kindness as may be convenient, and seem just and proper to the President of the United States.

ARTICLE 3.

All trade and intercourse with the Sioune and Ogallala bands shall be transacted at such place or places as may be designated and pointed out by the President of the United States, through his agents; and none but American citizens, duly authorized by the United States, shall be admitted to trade or hold intercourse with said bands of Indians.

ARTICLE 4.

That the Sioune and Ogallala bands may be accommodated with such articles of merchandise, &c. as their necessities may demand, the United States agree to admit and license traders to hold intercourse with said bands, under mild equitable regulations: in consideration of which, the Sioune and Ogallala bands bind themselves to extend protection to the persons and the property of the traders, and the persons legally employed under them, whilst they remain within the limits of their particular district of country. And the said Sioune and Ogallala bands further agree, that if any foreigner or other persons, not legally authorized by the United States, shall come into their district of country, for the purposes of trade or other views, they will apprehend such person or persons, and deliver him or them to some United States' superintendent, or agent of Indian affairs, or to the commandant of the nearest military post, to be dealt with according to law.--And they further agree to give safe conduct to all persons who may be legally authorized by the United States to pass through their country; and to protect, in their persons and property, all agents or other persons sent by the United States to reside temporarily among them; nor will they, whilst on their distant excursions, molest or interrupt any American citizen or citizens who may be passing from the United States to New Mexico, or returning from thence to the United States.

ARTICLE 5.

That the friendship, which is now established between the

United States and the Sioune and Ogallala bands should not be interrupted by the misconduct of individuals, it is hereby agreed, that for injuries done by individuals, no private revenge or retaliation shall take place, but instead thereof, complaints shall be made, by the injured party, to the superintendent or agent of Indian affairs, or other person appointed by the President; and it shall be the duty of said Chiefs, upon complaint being made as aforesaid, to deliver up the person or persons, against whom the complaint is made, to the end that he or they may be punished agreeably to the laws of the United States. And, in like manner, if any robbery, violence or murder, shall be committed on any Indian or Indians belonging to the said bands, the person or persons so offending shall be tried, and if found guilty shall be punished in like manner as if the injury had been done to a white man. And it is agreed, that the chiefs of said Sioune and Ogallala bands shall, to the utmost of their power, exert themselves to recover horses or other property, which may be stolen or taken from any citizen or citizens of the United States, by any individual or individuals of said bands; and the property so recovered shall be forthwith delivered to the agents or other person authorized to receive it, that it may be restored to the proper owner. And the United States hereby guaranty to any Indian or Indians of said bands, a full indemnification for any horses or other property which may be stolen from them by any of their citizens: Provided, The property stolen cannot be recovered, and that sufficient proof is produced that it was actually stolen by a citizen of the United

States. And the said Sioune and Ogallala bands engage, on the requisition or demand of the President of the United States, or of the agents, to deliver up any white man resident among them.

ARTICLE 6.

And the Chiefs and Warriors, as aforesaid, promise and engage, that their bands will never, by sale, exchange, or as presents, supply any nation, tribe, or band of Indians, not in amity with the United States, with guns, ammunition, or other implements of war.

Done at the mouth of the Teton river, this 5th day of July, A.D. 1825, and of the independence of the United States the fiftieth.

In testimony whereof, the said commissioners, Henry Atkinson and Benjamin O'Fallon, and the chiefs, head men, and warriors, of the Sioune and Ogallala bands, have hereunto set their hands, and affixed their seals.

TREATY OF FORT LARAMIE WITH THE SIOUX, 1851

(A quarter-century after their first formal agreement with the United States, the Teton bands were the most powerful signatories of a new treaty that shifted the focus of Indian affairs from the fur trade to the consequences of white expansion. The conference at Fort Laramie in the late summer of 1851 brought representatives of seven tribes together to meet with David Mitchell and Thomas Fitzpatrick. The Americans were concerned to protect the overland trail and to reduce intertribal warfare (see Articles 1-4) while the Indians accepted the American recognition of their territory and the government's promise of subsidies (see Article 7). Boundaries were drawn between tribes in Article 5 of the treaty, but these had little significance since the same article recognized the tribes' "claims to other lands" and several groups--particularly the Sioux--were already expanding beyond their recognized territories. Finally, it is significant to note that in Article 6, federal officials attempted to elevate band leaders who were signatories to the treaty ("principals or head chiefs") to the status of tribal leaders.)

Articles of a treaty made and concluded at Fort Laramie, in the Indian Territory, between D.D. Mitchell, superintendent of Indian affairs, and Thomas Fitzpatrick, Indian agent, commissioners specially appointed and authorized by the

President of the United States, of the first part, and the chiefs, headmen, and braves of the following Indian nations, residing south of the Missouri River, east of the Rocky Mountains, and north of the lines of Texas and New Mexico, viz, the Sioux or Dahcotahs, Cheyennes, Arrapahoes, Crows, Assiniboines, Gros-Ventre, Mandans, and Arrickaras, parties of the second part, on the seventeenth day of September, A.D. one thousand eight hundred and fifty-one.

Article 1. The aforesaid nations, parties to this treaty, having assembled for the purpose of establishing and confirming peaceful relations amongst themselves, do hereby covenant and agree to abstain in future from all hostilities whatever against each other, to maintain good faith and friendship in all their mutual intercourse, and to make an effective and lasting peace.

Article 2. The aforesaid nations do hereby recognize the right of the United States Government to establish roads, military and other posts, within their respective territories.

Article 3. In consideration of the rights and privileges acknowledged in the preceding article, the United States bind themselves to protect the aforesaid Indian nations against the commission of all depredations by the people of the said United States, after the ratification of this treaty.

Article 4. The aforesaid Indian nations do hereby agree and bind themselves to make restitution or satisfaction for any wrongs committed, after the ratification of this treaty, by any band or

individual of their people, on the people of the United States, whilst lawfully residing in or passing through their respective territories.

Article 5. The aforesaid Indian nations do hereby recognize and acknowledge the following tracts of country, included within the metes and boundaries hereinafter designated, as their respective territories, viz:

The territory of the Sioux or Dahcotah Nation, commencing the mouth of the White Earth River, on the Missouri River; thence in a southwesterly direction to the forks of the Platte River; thence up the north fork of the Platte River to a point known as the Red Bote, or where the road leaves the river; thence along the range of mountains known as the Black Hills, to the head-waters of Heart River; thence down Heart River to its mouth; and thence down the Missouri River to the place of beginning.

The territory of the Gros Ventre, Mandans, and Arrickaras Nations, commencing at the mouth of Heart River; thence up the Missouri River to the mouth of the Yellowstone River; thence up the Yellowstone River to the mouth of Powder River in a southeasterly direction, to the head-waters of the Little Missouri River; thence along the Black Hills to the head of Heart River, and thence down Heart River to the place of beginning.

The territory of the Assiniboin Nation, commencing at the mouth of Yellowstone River; thence up the Missouri River to the mouth of the Muscle-shell River; thence from the mouth of the Muscle-shell River in a southeasterly direction until it strikes

the head-water of Big Dry Creek; thence down that creek to where it empties into the Yellowstone River, nearly opposite the mouth of Powder River, and thence down the Yellowstone River to the place of beginning.

The territory of the Blackfoot Nation, commencing at the mouth of Muscle-shell River; thence up the Missouri River to its source; thence along the main range of the Rocky Mountains, in a southerly direction, to the head-waters of the northern source of the Yellowstone River; thence down the Yellowstone River to the mouth of Twenty-five Yard Creek; thence across to the head-waters of the of the Muscle-shell River, and thence down the Muscle-shell River to the place of beginning.

The territory of the Crow Nation, commencing at the mouth of Powder River on the Yellowstone; thence up Powder River to its source; thence along the main range of the Black Hills and Wind River Mountains to the head-waters of the Yellowstone River; thence down the Yellowstone River to the mouth of Twenty-five Yard Creek; thence to the head waters of the Muscle-shell River; thence down the Muscle-shell River to its mouth; thence to the head-waters of Big Dry Creek, and thence to its mouth.

The territory of the Cheyennes and Arrapahoes, commencing at the Red bote, or the place where the road leaves the north fork of the Platte River; thence up the north fork of the Platte River to its source; thence along the main range of the Rocky Mountains to the head-waters of the Arkansas River; thence down the Arkansas River to the crossing of the Santa Fe road; thence in a

northwesterly direction to the forks of the Platte River, and thence up the Platte River to the place of beginning.

It is, however, understood that, in making this recognition and acknowledgment, the aforesaid Indian nations, do not hereby abandon or prejudice any rights or claims they may have to other lands; and further, that they do not surrender the privilege of hunting, fishing, or passing over any of the tracts of country heretofore described.

Article 6. The parties to the second part of this treaty having selected principals or head-chiefs for their respective nations, through whom all national business will hereafter be conducted, do hereby bind themselves to sustain said chiefs and their successors during good behavior.

Article 7. In consideration of the treaty stipulations, and for the damages which have or may occur by reason thereof to the Indian nations, parties hereto, and for their maintenance and the improvement to deliver to the said Indian nations the sum of fifty thousand dollars per annum for the term of ten years, with the right to continue the same at the discretion of the President of the United States for a period not exceeding five years thereafter, in provisions, merchandise, domestic animals, and agricultural implements, in such proportions as may be deemed best adapted to their condition by the President of the United States, to be distributed in proportion to the population of the aforesaid Indian nations.

Article 8. It is understood and agreed that should any of the

Indian nations, parties to this treaty, violate any of the provisions thereof, the United States may withhold the whole or a portion of the annuities mentioned in the preceding article from the nation so offending, until, in the opinion of the President of the United States, proper satisfaction shall have been made.

In testimony whereof the said D.D. Mitchell and Thomas Fitzpatrick commissioners as aforesaid, and the chiefs, headmen, and braves, parties hereto, have set their hands and affixed their marks, on the day and at the place first above written.

D.D. Mitchell

TREATY WITH THE SIOUX-BRULE, OGLALA, MINICONJOU,
YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE,
SANS ARCS, AND SANTEE-AND ARAPAHO, 1868

(The 1868 treaty had four major parts. Article 1 pledged both parties to peace and thus ended the Bozeman fighting. Article 2 established the area west of the Missouri River for the "absolute and undisturbed use" of the Sioux, thus recognizing the first reservation set aside for that tribe. The third part of the treaty, Articles 4 through 12 created mechanisms for the well-being of the Sioux bands in a region that was being settled by whites. This portion of the agreement promised the Indians tools, seeds, clothing, education, individual plots of land, farming tools and noted that no amendment could be made in these arrangements without the agreement of three-fourths of the members of the signatory bands. The intention here was to provide for Indian subsistence and to make it difficult for a small group within the tribe to disrupt the agreement. Finally, Article 16 recognized the Bozeman trail area as "unceded Indian territory" where whites would not be allowed to settle and within which there would be no military posts. Existing posts there were to be abandoned. This section removed the principal cause of the most recent conflict.

Each of the treaty's four sections appealed to different

groups of Sioux. The last provisions concerning the Bozeman trail were most important to Red Cloud and the hostiles, whereas the creation of a reservation appealed to leaders like Spotted Tail who worried about the intrusion of white settlers, and the promise of farming tools and seed was most attractive to the Yankton bands who had settled in the agricultural areas east of the Missouri.)

Articles of a treaty made and concluded by and between Lieutenant-General William T. Sherman, General William S. Harney, General Alfred H. Terry, General C.C. Augur, J.B. Henderson, Nathaniel G. Taylor, John B. Sanborn, and Samuel F. Tappen, duly appointed commissioners on the part of the United States, and the different bands of the Sioux Nation of Indians, by their chiefs and head-men, whose names are hereto subscribed, they being duly authorized to act in the premises.

ARTICLE 1. From this day forward all war between the parties to this agreement shall forever cease. The Government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they now pledge their honor to maintain it.

If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will upon

proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also re-imburse the injured person for the loss sustained.

If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States, and at peace therewith, the Indians herein named solemnly agree that they will, upon proof made to their agent and notice by him, deliver up the wrong-doer to the United States, to be tried and punished according to its laws; and in case they wilfully refuse so to do, the person injured shall be re-imbursed for his loss from the annuities or other moneys due or to become due to them under this or other treaties made with the United States. And the President, on advising with the Commissioner of Indian Affairs, shall prescribe such rules and regulations for ascertaining damages under the provisions of this article as in his judgment may be proper. but no one sustaining loss while violating the provisions of this treaty of the laws of the United States shall be re-imbursed therefor.

ARTICLE 2. The United States agrees that the following district of country, to wit, viz: commencing on the east bank of the Missouri river where the forty-sixth parallel of north latitude crosses the same, thence along low-water mark down said east bank to a point opposite where the northern line of the State of

Nebraska strikes the river, thence west across said river, and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point where the forty-sixth parallel of north latitude intercepts the same, thence due east along said parallel to the place of beginning; and in addition thereto, all existing reservations on the east bank of said river shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons except those herein designated and authorized so to do, and except such officers, agents, and employes of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by laws, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, or in such territory as may be added to this reservation for the use of said Indians, and henceforth they will and do hereby relinquish all claims or right in and to any portion of the United states or Territories, except such as is embraced within the limits aforesaid, and except as hereinafter provided.

ARTICLE 3. If it should appear from actual survey or other satisfactory examination of said tract of land that it contains less than one hundred and sixty acres of tillable land for each person who, at the time, may be authorized to reside on it under

the provisions of this treaty, and a very considerable number of such persons shall be disposed to commence cultivating the soil as farmers, the United States agrees to set apart, for the use of said Indians, as herein provided, such additional quantity or arable land, adjoining to said reservation, or as near to the same as it can be obtained, as may be required to provide the necessary amount.

ARTICLE 4. The United States agrees, at its own proper expense, to construct at some place on the Missouri River, near the center of said reservation, where timber and water may be convenient, the following buildings, to wit: a warehouse, a store-room for the use of the agent in storing goods belonging to the Indians, to cost not less than twenty-five hundred dollars; an agency-building for the residence of the agent, to cost not exceeding three thousand dollars; a residence for the physician, to cost not more than three thousand dollars; and five other buildings, for a carpenter, farmer, blacksmith, miller, and engineer or mission-building, so soon as a sufficient number of children can be induced by the agent to attend school, which shall not cost exceeding five thousand dollars.

The United States agrees further to cause to be erected on said reservation, near the other buildings herein authorized, a good steam circular-saw mill, with a grist-mill and shingle-machine attached to the same, to cost not exceeding eight thousand dollars.

ARTICLE 5. The United States agrees that the agent for said Indians shall in the future make his home at the agency-building;

that he shall reside among them, and keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by and against the Indians as may be presented for investigation under the provisions of their treaty stipulations, as also for the faithful discharge of other duties enjoined on him by law. In all cases of depredation on person or property he shall cause the evidence to be taken in writing and forward, together with his findings, to the Commissioner of Indian Affairs, whose decision, subjects to the revision of the Secretary of the Interior, shall be binding on the parties of this treaty.

ARTICLE 6. If any individual belonging to said tribes of Indians, or legally incorporated with them, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding three hundred and twenty acres in extent, which tract, when so selected, certified, and recorded in the "land-book," as herein directed, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

Any person over eighteen years of age, not being the head of a family, may in like manner select and cause to be certified to him or her, for purposes of cultivation, a quantity of land not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

For each tract of land so selected a certificate, containing a description thereof and the name of the person selecting it, with a certificate endorsed thereon that the same has been recorded, shall be delivered to the party entitled to it, by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the "Sioux Land Book."

The President may, at any time, order a survey of the reservation, and, when so surveyed, Congress shall provide for protecting the rights of said settlers in their improvements, and may fix the character of the title held by each. The United States may pass such laws on the subject of alienation and descent of property between the Indians and their descendants as may be thought proper. And it is further stipulated that any male Indians, over eighteen years of age, of any band or tribe that is or shall hereafter become a party to this treaty, who now is or who shall hereafter become a resident or occupant of any reservation or Territory not included in the tract of country designated and described in this treaty for the permanent home of the Indians, which is not mineral land, nor reserved by the United States for special purposes other than Indian occupation, and who shall have made improvements thereon of the value of two hundred dollars or more, and continuously occupied the same as a homestead for the term of three years, shall be entitled to receive from the United States a patent for one hundred and sixty acres of land including his said improvements, the same to be in the form of the legal

subdivisions of the surveys of the public lands. Upon application in writing, sustained by the proof of two disinterested witnesses, made to the register of the local land-office when the land sought to be entered is within a land district, and when the tract sought to be entered is not in any land district, then upon said application and proof being made to the Commissioner of the General Land-Office, and the right of such Indian or Indians to enter such tract or tracts of land shall accrue and be perfect from the date of his first improvements thereon, and shall continue as long as he continues his residence and improvements, and no longer. And any Indian or Indians receiving a patent for the land under the foregoing provisions, shall thereby and from thenceforth become and be a citizen of the United States, and be entitled to all the privileges and immunities of such citizens, and shall, at the same time, retain all his rights to benefits accruing to Indians under this treaty.

ARTICLE 7. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as are or may be settled on said agricultural reservations, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for the said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided and a teacher competent

to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher. The provisions of this article to continue for the not less than twenty years.

ARTICLE 8. When the head of a family or lodge shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year, not exceeding in value one hundred dollars, and for each succeeding year he shall continue to farm, for a period of three years more, he shall be entitled to receive seeds and implements as aforesaid, not exceeding in value twenty-five dollars.

And it is further stipulated that such persons as commence farming shall receive instruction from the farmer herein provided for, and whenever more than one hundred persons shall enter upon the cultivation of the soil, a second blacksmith shall be provided, with such iron, steel, and other material as may be needed.

ARTICLE 9. At any time after ten years from the making of this treaty, the United States shall have the privilege of withdrawing the physician, farmer, blacksmith, carpenter, engineer, and miller herein provided for, but in case of such withdrawal, an additional sum thereafter of ten thousand dollars per annum shall be devoted to the education of said Indians, and the Commissioner of Indian Affairs shall, upon careful inquiry into their condition, make such rules and regulations for the expenditure of said sum as will best

promote the educational and moral improvement of said tribes.

ARTICLE 10. In lieu of all sums of money or other annuities provided to be paid to the Indians herein named, under any treaty or treaties heretofore made, the United States agrees to deliver at the agency-house on the reservation herein named, on or before the first day of August of each year, for thirty years, the following articles to wit:

For each male person over fourteen years of age, a suit of good substantial woolen clothing, consisting of coat, pantaloons, flannel shirt, hat, and a pair of home-made socks.

For each female over twelve years of age, a flannel skirt, or the goods necessary to make it, a pair of woolen hose, twelve yards of calico, and twelve yards of cotton domestics.

For the boys and girls under the ages named, such flannel and cotton goods as may be needed to make each a suit as aforesaid, together with a pair of woolen hose for each.

And in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward to him a full and exact census of the Indians, on which the estimate from year to year can be based.

And in addition to the clothing herein named, the sum of ten dollars for each person entitled to the beneficial effects of this treaty shall be annually appropriated for a period of thirty years, while such persons roam and hunt, and twenty dollars for each person who engages in farming, to be used by the Secretary of the

Interior in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper. And if within the thirty years, at any time, it shall appear that the amount of money needed for clothing under this article can be appropriated to better uses for the Indians named herein, Congress may, by law, change the appropriation to other purposes; but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named. And the President shall annually detail an officer of the Army to be present and attend the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery. And it is hereby expressly stipulated that each Indian over the age of four years who shall have removed to and settled permanently upon said reservation and complied with the stipulations of this treaty, shall be entitled to receive from the United States, for the period of four years after he shall have settled upon said reservation, one pound of meat and one pound of flour per day, provided the Indians cannot furnish their own subsistence at an earlier date. And it is further stipulated that the United States will furnish and deliver to each lodge of Indians or family of persons legally incorporated with them, who shall remove to the reservation herein described and commence farming, one good American cow, and one good well-broken pair of American oxen within sixty days after such lodge or family shall have so settled upon said reservation.

ARTICLE 11. In consideration of the advantages and benefits

conferred by this treaty, and the many pledges of friendship by the United States, the tribes who are parties of this agreement hereby stipulate that they will relinquish all rights to occupy permanently the territory outside their reservation as herein defined, but yet reserve the right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill River, so long as the buffalo may range thereon in such numbers as to justify the case. And they, the said Indians, further expressly agree:

1st. That they will withdraw all opposition to the construction of the railroads now being built on the plains.

2d. that they will permit the peaceful construction of any railroad not passing over their reservation as herein defined.

3d. that they will not attack any persons at home, or travelling, nor molest or disturb any wagon-trains, coaches, mules, or cattle belonging to the people of the United States, or to persons friendly therewith.

4th. They will never capture, or carry off from the settlements, white women or children.

5th. They will never kill or scalp white men, nor attempt to do them harm.

6th. They withdraw all pretence of opposition to the construction of the railroad now being built along the Platte River and westward to the Pacific Ocean, and they will not in future object to the construction of railroads, wagon-roads, mail-stations, or other works of utility or necessity, which may be

ordered or permitted by the laws of the United states. But should such roads or other works by constructed on the lands of their reservation, the Government will pay the tribe whatever amount of damage may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or head-man of the tribe.

7th They agree to withdraw all opposition to the military posts or roads now established south of the North Platte River, or that may be established, not in violation of treaties heretofore made or hereafter to be made with any of the Indian tribes.

ARTICLE 12. No treaty for the cession of any portion or part of the reservation herein described which may be held in common shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians, occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him, as provided in article 6 of this treaty.

ARTICLE 13. The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter, miller, engineer, farmer, and blacksmiths as herein contemplated, and that such appropriations shall be made from time to time, on the estimates of Secretary of the Interior, as will be sufficient to employ such persons.

ARTICLE 14. It is agreed that the sum of five hundred dollars

annually, for three years from date, shall be expended in presents to the ten persons of said tribe who in the judgment of the agent may grow the most valuable crops for the respective year.

ARTICLE 15. The Indians herein named agree that when the agency-house or other buildings shall be constructed on the reservation named, they will regard said reservation their permanent home, and they will make no permanent settlement elsewhere; but they shall have the right, subject to the conditions and modifications of this treaty, to hunt, as stipulated in Article 11 hereof.

ARTICLE 16. The United States hereby agrees and stipulates that the country north of the North Platte River and east of the summits of the Big Horn Mountains shall be held and considered to be unceded Indian territory, and also stipulates and agrees that no white person or persons shall be permitted to settle upon or occupy any portion of the same; or without the consent of the Indians first had and obtained to pass through the same; and it is further agreed by the United States that within ninety days after the conclusion of peace with all the bands of the Sioux nation, the military posts now established in the territory in this article named shall be abandoned, and that the road leading to them and by them to the settlements in the Territory of Montana shall be closed.

ARTICLE 17. It is hereby expressly understood and agreed by and between the respective parties to this treaty that the execution of this treaty and its ratification by the United States

Senate shall have the effect, and shall be construed as abrogating and annulling all treaties and agreements heretofore entered into between the respective parties hereto, so far as such treaties and agreements obligate the United States to furnish and provide money, clothing, or other articles of property to such Indians and bands of Indians as become parties to this treaty, but no further.

In testimony of all which, we, the said commissioners, and we, the chiefs and headmen of the Brule band of the Sioux nation, have hereunto set our hands and seals at Fort Laramie, Dakota Territory, this twenty-ninth day of April, in the year one thousand eight hundred and sixty-eight.

The Sioux Bill, 1889

(Despite their success in 1368, the Sioux could not escape the onrush of white settlement and the designs of eager expansionists. Following gold strikes in the Black Hills, the United States acted under the cloak of an agreement to seize the area in 1876. In the 1300s, white settlers in the eastern Dakotas pushed for statehood and a further reduction in Indian landholding. Congress authorized two commissions in the 1800s to negotiate new boundaries for the Sioux reserve; both failed to win the three-fourths endorsement needed to alter the 1368 agreement. Finally, in 1889 a commission headed by General George Crook used a combination of threats, feasts and promises to gain approval of a new document. Because congress had suspended treaty-making in 1871, the new agreement was approved by joint resolution rather than ratified by the Senate. Nevertheless, its force was the same.

The 1889 agreement followed the same general format as the 1368 treaty. It outlined the boundaries of seven new reservations rather than one (Sections 1-7), contained promises of individually-owned land and assistance (Sections 8-20), and offered protection for nonreservation lands set aside for whites (Section 21). Unlike the earlier document, however, the 1889 law did not recognize any area other than the new reservations as remaining under exclusive Indian control, and it contained no mention of "chiefs and headmen" of the tribe. Most important, the areas opened to white

settlement were far larger than the reservations set aside for the Sioux. The promise of the 1868 treaty was thus undermined by a document that treated the Lakota people as marginal players in the drama of American "progress.")

An Act to divide a portion of the reservation of the Sioux Nation of Indians in Dakota into separate reservations and to secure the relinquishment of the Indian title to the remainder, and for other purposes.

March 2, 1889

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following tract of land, being a part of the Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Pine Ridge Agency in the Territory of Dakota namely: Beginning at the intersection of the one hundred and third meridian of longitude with the northern boundary of the State of Nebraska; thence north along said meridian to the South Fork of Cheyenne River, and down said stream to the mouth of Battle Creek; thence due east to White River; thence down White River to the mouth of Black Pipe Creek on White river; thence due south to said north line of the State of Nebraska; thence west on said north line to the place of beginning. Also, the following tract of land situated in the State of Nebraska, namely: Beginning at a point on

the boundary-line between the State of Nebraska and the Territory of Dakota where the range line between ranges forty-four and forty-five west of the sixth principal meridian in the Territory of Dakota, intersects said boundary-line; thence east along said boundary-line five miles; thence due south five miles; thence due west ten miles; thence due north to said boundary-line; thence due east along said boundary-line to the place of beginning: Provided, That the said tract of land in the State of Nebraska shall be reserved, by Executive order, only so long as it may be needed for the use and protection of the Indians receiving nations and annuities at the Pine Ridge Agency

SEC. 2. That the following tract of land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Rosebud Agency, in said Territory of Dakota, namely: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel to a point due south from the mouth of Black Pipe Creek; thence due north to the mouth of Black Pike Creek; thence down White River to a point intersecting the west line of Gregory County extended north; thence south on said extended west line of Gregory County to the intersection of the south line of Brule county extended west;

thence due east on said south line of Brule county extended to the point of beginning in the Missouri River, including entirely within said reservation all islands, if any, in said river.

SEC. 3. That the following tract of land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of the Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Standing Rock Agency, in the said Territory of Dakota, namely: Beginning at a point in the center of the main channel of the Missouri River, opposite the mouth of Cannon Ball River; thence down said center of the main channel to a point ten miles north of the mouth of the Moreau River, including also within said reservation all island, if any, in said river; thence due west to the one hundred and second degree of west longitude from Greenwich; thence north along said meridian to its intersection with the South Branch of Cannon Ball River, also known as Cedar Creek; thence down said South Branch of Cannon Ball River to its intersection with the main Cannon Ball River, and down said main Cannon Ball River to the center of the main channel of the Missouri River at the place of beginning.

SEC. 4. That the following tract of land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Cheyenne River Agency, in the said Territory of Dakota, namely: Beginning at a point in the center of the main channel of the Missouri River, ten

miles north of the mouth of the Moreau River, said point being the southeastern corner of the Standing Rock Reservation; thence down said center of the main channel of the Missouri River, including also entirely within said reservation all islands, if any, in said river, to a point opposite the mouth of the Cheyenne River; thence west to said Cheyenne River, and up the same to its intersection with the one hundred and second meridian of longitude; thence north along said meridian to its intersection with a line due west from a point in the Missouri River ten miles north of the mouth of the Moreau River; thence due east to the place of beginning.

SEC. 5. That the following tract of land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Lower Brule Agency, in said Territory of Dakota, namely: Beginning on the Missouri River at Old Fort George; thence running due west to the western boundary of Presho County; thence running south on said western boundary to the forty-fourth degree of latitude; thence on said forty-fourth degree of latitude to western boundary of township number seventy-two; south on said township western line to an intersecting line running due west from Fort Lookout; thence eastwardly on said line to the center of the main channel of the Missouri River at Fort Lookout; thence north in the center of the main channel of the said river to the original starting point.

SEC. 6. That the following tract of land, being a part of the Great Reservation of the Sioux Nation, in the Territory of Dakota,

is hereby set apart for a permanent reservation for the Indians receiving rations and annuities of the Crow Creek Agency, in said Territory of Dakota, namely: The whole of township one hundred and six, range seventy: township one hundred and seven, range seventy-one; township one hundred and eight, range seventy-one; township one hundred and eight, range seventy-two; township one hundred and nine, range seventy-two, (goes on to list several other tracts by township and range number).

SEC. 7. That each member of the Santee Sioux tribe of Indians now occupying a reservation in the State of Nebraska not having already taken allotments shall be entitled to allotments upon said reserve in Nebraska as follows: To each head of a family, one-quarter of a section: to each single person over eighteen years of age, one-eighth of a section: to each orphan child under eighteen years, one-eighth of a section: to each other person under eighteen years of age now living, one-sixteenth of a section; with title thereto, in accordance with the provisions of article six of the treaty concluded April twenty-ninth, eighteen hundred and sixty-eight, and the agreement with said Santee Sioux approved February twenty-eighth, eighteen hundred and seventy-seven, and rights under the same in all other respects conforming to this act. And said Santee Sioux shall be entitled to all other benefits under this act in the same manner and with the same conditions as if they were residents upon said Sioux Reservation, receiving rations at one of the agencies herein named: Provided, That all allotments heretofore made to said Santee Sioux in Nebraska are hereby ratified and

confirmed; and each member of the Flandreau band of Sioux Indians is hereby authorized to take allotments on the Great Sioux Reservation, or in lieu therefor shall be paid at the rate of one dollar per acre for the land to which they would be entitled, to be paid out of the proceeds of lands relinquished under this act, which shall be used under the direction of the Secretary of the Interior; and said Flandreau band of Sioux Indians is in all other respects entitled to the benefits of this act the same as if receiving rations and annuities at any of the agencies aforesaid.

SEC. 3. That the President is hereby authorized and required, whenever in his opinion any reservation of such Indians, or any part thereof, is advantageous for agricultural or grazing purposes, and the progress in civilization of the Indians receiving rations on either or any of said reservations shall be such as to encourage the belief that an allotment in severalty to such Indians, or any of them, would be for the best interest of said Indians, to cause said reservation, or so much thereof as is necessary, to be surveyed, or re-surveyed, and to allot the lands in said reservation in severalty to the Indians located thereon as aforesaid, in quantities as follows: To each head of a family, three hundred and twenty acres; to each single person over eighteen years of age, one-fourth of a section; to each orphan child under eighteen years of age, one-fourth of a section; and to each other person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-eighth of a section.

In case there is not sufficient land in either of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: Provided, That where the lands on any reservation are mainly valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual; or in case any two or more Indians who may be entitled to allotments shall so agree, the President may assign the grazing lands to which they may be entitled to them in one tract, and to be held and used in common.

SEC. 9. That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: Provided, That if any one entitled to an allotment shall fail to make a selection within five years within five years, the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct

the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner: Provided, That these sections as to the allotments shall not be compulsory without the consent of the majority of the adult members of the tribe, except that the allotments shall be made as provided for the orphans.

SEC. 10. That the allotments provided for in this act shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

SEC. 11. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the Lands held in trust for lands thus allotted for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to

the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs, as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatever, and patents shall issue accordingly. And each and every allottee under this act shall be entitled to all the rights and privileges and be subject to all the provisions of section six of the act approved February eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians and for other purposes." (NOTE: This is a reference to the General Allotment, or Dawes, Act passed by congress in February, 1887.) Provided, That the President of the United States may in any case, in his discretion, extend the period by a term not exceeding ten years; and if any lease or conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such lease or conveyance or contract shall be absolutely null and void: Provided further, That the law of descent and partition of the State or Territory law in force in the State or Territory where the lands may be situated to regulate descent, etc. shall apply thereto after patents therefore have been executed and delivered. Each of the patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge, to the allottee entitled

thereto.

SEC. 12. That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner, if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress: Provided, however, That all lands adapted to agriculture with or without irrigation, so sold or released to the United States by any Indian tribe shall be held by the United States for the purpose of securing homes to actual settlers, and shall be disposed of by the United States to actual and bona-fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: And provided further, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years' occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent shall be null and void. And the sums agreed to be paid by the

United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians to whom such reservation belonged; and the same, with interest thereof at five per centum per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians, or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward, delivered, free of charge, to the allottee entitled thereto.

SEC. 13. That any Indian receiving and entitled to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect, but residing upon any portion of said Great Reservation not included in either of the separate reservations herein established, may, at his option, within one year from the time when this act shall take effect, ... have the allotment to which he would be otherwise entitled on one of said separate reservations upon the land where such Indian may then reside, such allotment in all other respects conform to the allotments hereinbefore provided. Each member of the Ponca tribe of Indians now occupying a part of the old Ponca Reservation, within the limits of the said Great Sioux Reservation, shall be entitled to allotments upon said old Ponca Reservation as follows: To each head of a family, three hundred and twenty acres; to each single person over eighteen years of age, one-fourth of a section; to each orphan child under eighteen years of age, one-fourth of a

section; and to each other person under eighteen years of age now living, one-eighth of a section, with title thereto and rights under the same in all other respects conforming to this act. And said Poncas shall be entitled to all other benefits under this act in the same manner and with the same conditions as if they were a part of the Sioux Nation receiving rations at one of the agencies herein named. ...

SEC. 14. That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation created by this act available for agricultural purposes, the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such Indian reservation created by this act; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

SEC. 15. That if any Indian has, under and in conformity with the provisions of the treaty with the Great Sioux Nation concluded April twenty-ninth, eighteen hundred and sixty-eight, and proclaimed by the President February twenty-fourth, eighteen hundred and sixty-nine, or any existing law, taken allotments of land within or without the limits of any of the separate reservations established by this act, such allotments are hereby ratified and made valid, and such Indian is entitled to a patent therefore in conformity with the provisions of said treaty and

existing law and of the provisions of this act in relation to patents for individual allotments.

SEC. 16. That the acceptance of this act by the Indians as required by the said treaty concluded between the different bands of the Sioux Nation or Indians and the United States, April twenty-ninth, eighteen hundred and sixty eight, and proclaimed by the President February twenty fourth, eighteen hundred and sixty-nine, as hereinafter provided, shall be taken and held to be a release of all title on the part of the Indians receiving rations and annuities on each of the said separate reservations, to the lands described in each of the other separate reservations so created, and shall be held to confirm in the Indians entitled to receive rations at each of said separate reservations, respectively, to their separate and exclusive use and benefit, all the title and interest of every name and nature secured therein to the different bands of the Sioux Nation by said treaty of April twenty-ninth, eighteen hundred and sixty eight. ...

SEC. 17. That it be hereby enacted that the seventh article of the said treaty of April twenty-ninth, eighteen hundred and sixty-eight, securing to said Indians the benefits of education, subject to such modifications as Congress shall deem most effective to secure to said Indians equivalent benefits of such education, shall continue in force for twenty years from and after the time this act shall take effect; and the Secretary of the Interior is hereby authorized and directed to purchase, from time to time, for the use of said Indians, such and so many American breeding cows

of good quality, not exceeding twenty-five thousand in number, and bulls of like quality, not exceeding one thousand in number, as in his judgment can be under regulations furnished by him, cared for and preserved with their increase, by said Indians: Provided, That each head of family or single person over the age of eighteen years, who shall have or may hereafter take his or her allotment of land in severalty, shall be provided with two milch cows, one pair of oxens, with yoke and chain, or two mares and one set of harness in lieu of said oxen, yoke, and chain, as the Secretary of the Interior may deem advisable, and they shall also receive one plow, one wagon, one harrow, one hoe, one axe, and one pitchfork, all suitable to the work they may have to do, and also fifty dollars in cash; to be expended under the direction of the Secretary of the Interior in aiding such Indians to erect a house and other buildings suitable for residence or the improvement of his allotment; no sales, barter or bargains shall be made by any person other than said Indians with each other, of any of the personal property hereinbefore provided for, and any violation of this provision shall be deemed a misdemeanor and punished by fine not exceeding one hundred dollars, or imprisonment not exceeding one year or both in the discretion of the court: That for two years the necessary seeds shall be provided to plant five acres of ground into different crops, if so much can be used, and provided that in the purchase of such seed preference shall be given to Indians who may have raised the same for sale, and so much money as shall be necessary for this purpose is hereby appropriated out

of any money in the Treasury not otherwise appropriated; and in addition thereto there shall be set apart, out of any money in the Treasury not otherwise appropriated, the sum of three million dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest of which at five per centum per annum, shall be appropriated, under the direction of the Secretary of the Interior, to the use of the Indians receiving rations and annuities upon the reservations created by this act, in proportion to the numbers that shall so receive rations and annuities at the time this act takes effect, as follows: One-half of said interest shall be so expended for the promotion of industrial and other suitable education among said Indians, and the other half thereof in such manner and for such purposes, including reasonable cash payments per capita as, in the judgment of said Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support; and the Santee Sioux, the Flandreau Sioux, and the Ponca Indians shall be included in the benefits of said permanent fund, as provided in sections seven and thirteen of this act: Provided, That after the Government has been reimbursed for the money expended for said Indians under the provisions of this act, the Secretary of the Interior may, in his discretion, expend, in addition to the interest of the permanent fund, not to exceed ten per centum per annum of the principal of said fund in the employment of farmers and in the purchase of agricultural implements, teams, seeds, including reasonable cash payments per

capita, and other articles necessary to assist them in agricultural pursuits, and he shall report to Congress in detail each year his doings hereunder. And at the end of fifty years from the passage of this act, said fund shall be expended for the purpose of promoting education, civilization, and self-support among said Indians, or otherwise distributed among them as Congress shall from time to time thereafter determine.

SEC. 18. That if any land in said Great Sioux Reservation is now occupied and used by any religious society for the purpose of missionary or educational work among said Indians, whether situate outside of or within the lines of any reservation constituted by this act, or if any such land is so occupied upon the Santee Sioux Reservation, in Nebraska, the exclusive occupation and use of said land, not exceeding one hundred and sixty acres in any one tract, is hereby, with the approval of the Secretary of the Interior, granted to any such society so long as the same shall be occupied and used by such society for educational and missionary work among said Indians; and the Secretary of the Interior is hereby authorized and directed to give to such religious society patent of such tract of land to the legal effect aforesaid; and for the purpose of such educational or missionary work any such society may purchase, upon any of the reservations herein created, any land not exceeding in any one tract one hundred and sixty acres, not interfering with the title in severalty of any Indian, and with the approval of and upon such terms, not exceeding one dollar and twenty-five cents an acre, as shall be prescribed by the Secretary

of the Interior. And the Santee Normal Training School may, in like manner, purchase for such educational or missionary work on the Santee Reservation, in addition to the foregoing, in such location and quantity, not exceeding three hundred and twenty acres, as shall be approved by the Secretary of the Interior.

SEC. 19. That all the provisions of the said treaty with the different bands of the Sioux Nation of Indians concluded April twenty-ninth, eighteen hundred and sixty-eight, and the agreement with the same approved February twenty-eighth, eighteen hundred and seventy-seven, not in conflict with the provisions and requirements of this act, are hereby continued in force according to their tenor and limitation, anything in this act to the contrary notwithstanding.

SEC. 20. That the Secretary of the Interior shall cause to be erected not less than thirty school-houses, and more, if found necessary, on the different reservations, at such points as he shall think for the best interest of the Indians, but at such distance only as will enable as many as possible attending schools to return home nights, as white children do attending district schools. And provided, That any white children residing in the neighborhood are entitled to attend the said school on such terms as the Secretary of the Interior may prescribe.

SEC. 21. That all the lands in the Great Sioux Reservation outside of the separate reservations herein described are hereby restored to the public domain, except American Island, Farm Island, and Niobrara Island, and shall be disposed of by the United States

to actual settlers only, under the provisions of the homestead law and under the law relating to town-sites ...

SEC. 22. That all money accruing from the disposal of lands in conformity with this act shall be paid into the Treasury of the United States and be applied solely as follows: first, to the reimbursement of the United states for all necessary actual expenditures contemplated and provided for under the provisions of this act and the creation of the permanent fund hereinbefore provided: and after such reimbursement to the increase of said permanent fund for the purposes hereinbefore provided.

SEC. 23. (Confirmed claims of squatters on the Crow Creek reserve.)

SEC. 24. That sections sixteen and thirty-six of each township of the lands open to settlement under the provisions of this act whether surveyed or unsurveyed are hereby reserved for the use and benefit of the public schools, as provided by the act organizing the Territory of Dakota: and whether surveyed or unsurveyed said sections shall not be subject to claim, settlement, or entry under the provision of this act or any of the land laws of the United States: Provided, however, That the United States shall pay to said Indians, out of any moneys in the Treasury not otherwise appropriated, the sum of one dollar and twenty-five cents per acre for all lands reserved under the provisions of this section.

SEC. 25. That there is hereby appropriated the sum of one hundred thousand dollars, out of any money in the Treasury not otherwise appropriated, or so much thereof as may be necessary, to

be applied and used towards surveying the lands herein described as being opened for settlement, said sum to be immediately available: which sum shall not be deducted from the proceeds of lands disposed of under this act.

SEC. 26. That all expenses for the surveying, plotting, and disposal of the lands opened to settlement under this act shall be borne by the United States, and not deducted from the proceeds of said lands.

SEC. 27. That the sum of twenty-eight thousand two hundred dollars, of so much thereof as may be necessary, be and hereby is, appropriated out of any money in the Treasury not otherwise appropriated, to enable the Secretary of the Interior to pay to such individual Indians of the Red Cloud and Red Leaf bands of Sioux as he shall ascertain to have been deprived by the authority of the United States of ponies in the year eighteen hundred and seventy-six, at the rate of forty dollars for each pony; and he is hereby authorized to employ such agent or agents as he may deem necessary in ascertaining such facts as will enable him to carry out this provision, and to pay them therefor such sums as shall be deemed by him fair and just compensation ...

SEC. 28. That this act shall take effect, only, upon the acceptance thereof and consent thereto by the different bands of the Sioux Nation of Indians, in manner and from prescribed by the twelfth article of the treaty between the United States and said Sioux Indians concluded April twenty-ninth, eighteen hundred and sixty-eight, which said acceptance and consent, shall be made known

by proclamation by the President of the United States, upon satisfactory proof presented to him, that the same has been obtained in the manner and form required, by said twelfth article of said treaty; which proof shall be presented to him within one year from the passage of this act: and upon failure of such proof and proclamation this act becomes of no effect and null and void.

SEC. 29. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of twenty-five thousand dollars, or so much thereof as may be necessary which sum shall be expended, under the direction of the Secretary of the Interior, for procuring the assent of the Sioux Indians to this act provided in section twenty-seven.

SEC. 30. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved, March 2, 1889.

PART THREE. A COMPARATIVE PERSPECTIVE: THE CASE OF NEW ZEALAND

Introduction

Text of the Treaty of Waitangi, 1840 (Official English Translation)	p. 157
Translation of the Maori Text by I.H. Kawharu)	p. 161

SOURCES:

I.H. Kawharu, editor, Waigangi: Maori and Pakeha Perspectives of the Treaty of Waitangi (Aukland, New Zealand: Oxford University Press, 1989).

Claudia Orange, The Treaty of Waitangi (Wellington, New Zealand: Allen and Unwin/Port Nicholson Press, 1987).

Introduction

Few European nations negotiated treaties with indigenous people in the course of their expansion into Asia, Africa and the Americas. The Spanish conquest of Central and South America only rarely involved treaty making, and the British in Canada signed relatively few of these documents. The British expansion into Australia, India and Africa involved very few, if any, agreements of this kind.

Despite the anomalous position of American treaty making, however, there are comparative examples one might examine. Canadian treaties, while fewer in number, carried at least a partial recognition of Indian claims to land ownership. Over time, these treaties have become vehicles for tribal claims to sovereignty that roughly parallel those in the United States. Less well known, and somewhat more comparable to the American case is the Treaty of Waitangi, signed in New Zealand by Maori chiefs and representatives of the British government in 1840. The Waitangi Treaty contained a recognition of native sovereignty and a statement of British obligations. In this way it shared with the American agreements we have discussed previously the fact that it was negotiated, that it represented a meeting of two national entities and two cultural traditions.

Despite its similarity to American documents, the Waitangi Treaty was distinctive in several ways. First, it was negotiated at a bilingual conference which produced both a Maori and an English text of the agreement. All treaties between Native

Americans and the United States were drawn up and ratified in English versions only. Translators made it possible for non-English speaking leaders to negotiate agreements with American officials, but the text of American treaties was always in English. Second, Waitangi was a national treaty, signed first by northern Maori leaders at the Bay of Islands, but then circulated to others in all parts of the island nation. The treaty therefore does not contain specific boundary designations or specific stipulations of British actions in particular locations or with particular chiefs. Finally, Waitangi was the only treaty signed by the British and the Maoris. As a result, even though it defines a broad relationship between Europeans and indigenous people in a way that runs parallel to American practice, that definition is not repeated in other, similar documents over a long period of time.

Finally, one of the most fascinating aspects of the Treaty of Waitangi is the different interpretations one can draw from the English and Maori versions of the document. Students can draw their own conclusions from the texts below, but their attention should be drawn to two crucial Maori words. These are Rangatiratanga, derived from rangatira (chief), and Kawanatanga, derived from kawana (governor). Rangatiratanga has been translated as chieftainship, the authority that flows from the position of chief. It would suggest ultimate authority and state power. Kawanatanga, on the other hand, refers to trusteeship, the authority to carry out the task of overseeing a community or specific task. In Maori, kawanatanga does not carry connotations

of chiefly power or final authority.

The confusion (or deception) created by these terms is clear in the first sentence of the treaty. In the English version, Queen Victoria is entering into the agreement to protect the "rights and property" of the Maori chiefs. In the Maori text of the document, however, Queen Victoria is protecting the chiefs and their rangatiratanga, their authority. Later in the first paragraph, when the English version of the text speaks of "Her Majesty's Sovereign authority," creating a "civil government," the Maori words rangatira and kawanatanga are used and the modern Maori translation speaks only of appointing a chief to treat with local leaders and the establishment of a government.

The different readings of the Maori text can be detected in Articles One and Two as well. In the first article, the Queen is granted kawanatanga which the English version translates as "all the rights and powers of sovereignty" and the modern Maori translation refers to as "government" in the sense of trusteeship. In the second article, the English version recognizes the "possession" of Maori lands by Maori leaders despite the fact that the word rangatiratanga is used. Thus the modern Maori translation of Article Two contains a recognition not of possession but of "chieftainship."

A careful reading of the two treaty texts below--the first the official English version sent to London by the treaty negotiators and the second a modern translation by the Maori scholar I.H. Kawharu--will indicate that the signatories to the agreement had

sharply differing views of what they were signing. The Maori leaders believed themselves to be gaining the endorsement and the protection of the British Crown, while the English negotiators understood that they were expanding the limits of the empire. The extension of their national sovereignty to New Zealand opened a variety of legal, political and military possibilities, while for Maoris the document quickly came to represent the first of many broken promises.

A final similarity between the Treaty of Waitangi and the hundreds of American treaties with Indian tribes is the fact that the document did not resolve future conflicts. Rather than peace and goodwill, the nineteenth century in New Zealand witnessed expropriation, violence and a hardening of racial antagonism. This history runs parallel to the American experience in many ways. Furthermore, Waitangi Treaty is today the focus of an extensive legal and historical struggle. As a democratic society with a population that is 9% Maori, New Zealand is currently engaged in an effort to reach some reasonable resolution of the confusion, deception and dispossession triggered by the negotiations of 1840. A government tribunal is currently investigating a large number of claims filed by specific tribes with grievances under the treaty, and a scholarly debate is underway regarding the history of Maori-English relations, while educators, lawyers and politicians from all parts of the country are simultaneously engaged in an effort to connect the efforts of judges and academics to the everyday lives of their countrymen.

TEXT OF THE TREATY OF WAITANGI

(While first sighted by Dutch explorers in the seventeenth century, New Zealand was unknown to Europeans until the voyages of Captain James Cook at the end of the eighteenth century. Beginning soon afterwards, a variety of European fishermen, traders, and missionaries landed in New Zealand and many of them stayed. By 1830 there were approximately 2,000 Europeans living in New Zealand among 100-200,000 Maoris. Interaction with the British grew more frequent following the establishment of penal colonies in Australia, but other powers (particularly France and the United States) were also present. In 1840, wanting to thwart the ambitions of its imperial rivals as well as to protect its growing interest in the western Pacific, the British decided to expand into New Zealand. William Hobson was dispatched to the Bay of Islands where he drafted the English version of the treaty. Local missionaries, who had developed a written version of Maori a decade earlier, translated Hobson's text and urged the assembled chiefs to sign it. On February 6, after extensive debate, they agreed.

Official English Version

Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good

Order has deemed it necessary in consequence of the great number of her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorize me, William Hobson, a Captain in Her Majesty's Royal Navy, Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the first

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess, over their respective Territories as the sole Sovereigns thereof.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full, exclusive and undisturbed possession of their Lands and Estates, Forests, Fisheries, and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

(Signed) W Hobson Lieutenant Governor

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof in witness of which we have attached our signatures or marks at the places and

the dates respectively specified -

Done at Waitangi this Sixth day of February in the year of Our
Lord one thousand eight hundred and forty.

Translation of the Maori Text by I.H. Kawharu (1989)

(Kawharu first presents a literal translation of the "official" Maori text.)

Victoria, the Queen of England in her concern to protect The Chiefs and the sub-tribes of New Zealand in her desire and to preserve to them their chieftainship and their land and to maintain continually also the Peace to them and the quiet living, therefore has considered she a thing right to give a Chief one who will arrange with the people ordinary of New Zealand to reach an agreement by the Chiefs ordinary [for] the government of the Queen [to be] upon the places all of this land and the Islands because also there are many other people of her tribe [who] have lived on this land, and will come here. So the Queen desires to establish the government so that no evil will come to the people Maori [and] to the European living law without. So [it] has pleased the Queen to allow me William Hobson a Captain in the Royal Navy to be Governor for the places all of New Zealand to be received shortly [and] hereafter to the Queen [and so] is making she for the Chiefs of the confederation of the subtribes of New Zealand and other Chiefs these laws set out here

[This is] the first

The Chiefs of the Confederation and the Chiefs all also [who]

have not entered that Confederation give absolutely to the Queen of England for ever the government¹ all of their land

[This is] the second

The Queen of England arranges [and] agrees to the Chiefs to the subtribes to people all of New Zealand the unqualified exercise of their chieftainship over their lands, over their villages, and over their treasures all. But on the other hand the chiefs of the Confederation and the Chiefs all will give to the Queen the sale and purchase of those parts land is willing [to sell] the person owning the land for the amount of the price agreed between them [viz. the vendor and] the purchaser appointed by the Queen as an agent purchase for her

[This is] the third

For arrangement therefore this for the agreement concerning the Government of the Queen will be protected by the Queen of England the people ordinary all of New Zealand [who] will give them the rights and duties all in equal measure [that apply] under her constitution to the people of England.

[signed William Hobson

¹. Kawharu notes: "There could be no possibility of the Maori signatories having any understanding of government in the sense of "sovereignty." (p.319, Waitangi: Maori and Pakeha Perspectives)

Consul and Lieut. Gov

So we the Chiefs of the Confederation of the sub-tribes of New Zealand meeting here at Waitangi are therefore the Chiefs of New Zealand having seen the shape of these words being accepted and agreed all by us, thus are recorded our names and our marks

Done this at Waitangi on the sixth of the days of February in the year one thousand, eight hundred and forty of our Lord

(Kawharu then presents a "reconstruction" of the treaty using his own command of Maori and his reading of the treaty proceedings.)

Victoria, the Queen of England, in her concern to protect the chiefs and subtribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order considers it just to appoint an administrator one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all of this land and (adjoining) islands and also because there are many of her subjects already living on this land and others yet to come.

So the queen desires to establish a government so that no evil will come to Maori and European living in a state of lawlessness.

So the Queen has appointed me, William Hobson a captain in the Royal Navy to be Governor for all parts of New Zealand (both those shortly to be received by the Queen and (those) to be received to

the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.

The first

The Chiefs of the Confederation and all the chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land.

The second

The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

(Signed) W. Hobson

Consul and Lieutenant-Governor

So we, the Chiefs of the Confederation and of the subtribes of New Zealand meeting here at Waitangi having seen the shape of

these words which we accept and agree to record our names and our marks thus. Was done at Waitangi on the sixth of February in the year of our Lord 1840.